

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
TENNESSEE AT NASHVILLE

ANDREA WOODWARD, individually
and as next friend and wife of
JEFFERY WOODWARD, deceased,
and SANDRA RUTTER,

No. 3:10-cv-01060

Plaintiffs,

Judge William J. Haynes, Jr.

vs.

Magistrate Judge John Bryant

CITY OF GALLATIN, TENNESSEE,
et al.,

Defendants.

DEPOSITION OF KENNETH R. WALLENTINE

TAKEN AT:

The Hyatt Place Hotel
52 North Tommy Thompson Drive
Salt Lake City, Utah

DATE:

Friday, September 14, 2012

TIME:

9:17 a.m.

REPORTED BY:

Scott M. Knight, RPR

APPEARANCES

FOR PLAINTIFFS:

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BEDNARZ & BEDNARZ

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Deposition of Kenneth R. Wallentine

September 14, 2012

PROCEEDINGS

KENNETH R. WALLENTINE, called as a witness for and on behalf of the Plaintiffs, being first duly sworn, was deposed and testified as follows:

EXAMINATION

BY-MR.BEDNARZ:

Q. Mr. Wallentine, my name is Joe Bednarz, Jr. We met just a few minutes ago. And I've got your report and CV here, so I kind of know about your background and your training, but I want to go through some of that to start with. Why don't we start with the education, just kind of take me through it.

A. Do you want me to work backwards or forward?

Q. Oh, why don't we go backwards.

A. That's probably easier because then you can cut me off to when I start telling you about--

Q. When you get to elementary school--

A. --got kicked out of elementary school in third grade, you may not care about that.

Q. Well, I need to hear about that now that you told me.

A. My most--my most recent formal education that ended with a terminal degree was law school, graduated from

1 law school in April, I believe it was, of 1990 here in Utah,
2 Brigham Young University. I attended law school from 1987 to
3 1990. Prior to that, I graduated with a bachelor's degree and
4 I--I don't recall the year on the degree. I was a long-term
5 undergraduate student. I did a couple of years in the late
6 '70s, and when I became a police officer, I started on the one
7 or two classes a semester program. Obviously, this was before
8 we had the opportunity for distance learning and Web-based
9 education, and so I would attend as my rotating schedule
10 allowed. My terminal degree, bachelor's degree, also was from
11 Brigham Young University. And I want to say, sir, that it was
12 1985 or 1986 that I completed that. Prior to that, I attended
13 high school, graduated high school here in Utah, 1974.

14 Q. Okay. That's probably far enough back.

15 A. And it was not anything particularly malicious
16 that got me kicked out of third grade, sir.

17 Q. Okay. I got kicked out in fifth grade, but
18 that's a long story.

19 In addition to the formal education we've talked
20 about, I take it you've been to a number of--I don't guess
21 vocational schools is the right word, but on-the-job, or
22 training related to specific jobs?

23 A. Yes, sir.

24 Q. For instance, police academy?

25 A. I attended the police academy. At the time I

1 began law enforcement in Utah, the law did not require that
2 you attend the police academy to be a police officer.
3 Obviously, the law has changed. Nonetheless, I did attend the
4 police academy. After I'd been a cop for a year and a half,
5 two years, attended the police academy in nineteen eighty--
6 '83, I believe. 1983 here in Utah.

7 Q. Okay. Any other significant education that--I
8 know we all go to week-long seminars and things like that, but
9 anything that you would consider significant?

10 A. Beyond a week-long seminar, dog handler training.
11 And most recently there is a program known as the West Point
12 leadership program, named for the West Point Military Academy,
13 the United States Army's leadership training program. That is
14 equivalent of a one-semester program I completed in 2010, the
15 fall--fall semester of 2010.

16 Q. Why don't we go through your employment a little
17 bit. And I guess you--currently you're with the state of
18 Utah?

19 A. Yes, sir.

20 Q. And tell me about that position.

21 A. I'm the chief of law enforcement for the Utah
22 attorney general. I command the investigation division, which
23 is comprised of a couple of investigative bureaus, each of
24 which has different working groups or different-- they're
25 called sections or squads within it. I'm responsible for the

1 day-to-day command and supervision of all of the investigative
2 efforts within the office, with the exception of some Medicaid
3 fraud, white-collar stuff that's done out of another unit.

4 Q. What type of investigations would your unit
5 handle?

6 A. We--we have plenary jurisdiction over certain
7 types of crimes that are--are designated by statute or
8 administrative rule or by agreement. Those include, for
9 example, child sexual exploitation. Child sexual predation is
10 an area of plenary responsibility. We have a group that
11 focuses on major violent, substantial financial crimes
12 committed by undocumented residents, including drug
13 trafficking, gun trafficking, and human trafficking.

14 We deal with the--what we colloquially call cold
15 case homicide cases, clearinghouse for cold case homicide
16 cases in the state. We have a homicide investigation support
17 role. The state of Utah--no surprise, I'm sure--has a number
18 of small jurisdictions, a number of rural jurisdictions which
19 may or may not be equipped to handle complex homicides, and so
20 we have investigators assigned to travel the state to do that.

21 We handle investigations into officer-involved
22 fatalities, whether they be shootings or other types of
23 officer-involved fatalities in a couple of contexts. We may
24 be called on to investigate potential--conduct that
25 potentially could be criminal on--on the part of police

1 officers, or more commonly, are requested to assist a county
2 attorney or a law enforcement agency in the investigation of
3 an officer-involved fatality or a substantial--excuse me--a
4 significant use of force by a police officer.

5 I stress: not for administrative purposes.
6 There's a separate state agency that deals with the
7 administrative and licensure of police officers. We don't
8 have anything to do with that.

9 We also have responsibility for public correction
10 investigations within the state for white collar and financial
11 crimes that impact broadly the interests of the state of Utah,
12 the interests of Utah state government that cross county
13 and/or state lines and/or require coordination with federal
14 investigative agencies. We have a unit that deals primarily
15 with computer forensics. I'd be happy to provide more detail,
16 if you'd like, with that, but that's probably a good summation
17 just to say they deal with computer forensics.

18 And then we have a broad responsibility with
19 respect to the civil rights investigations and providing
20 investigative support for the various components of attorney
21 units within the office of the attorney general.

22 Those are the--that's a gross summary of the
23 primary areas of investigative responsibility. And then
24 there's sort of a catch all. And that is, we conduct
25 investigations as requested or directed by leadership of the

1 Utah State Legislature, by the governor, the attorney general,
2 or members of the governor's cabinet.

3 Q. Let me ask you this: You've got a couple of
4 cases listed for your litigation history from Utah. One is
5 the Cardall--Cardall case--

6 A. Cardall, yes, sir.

7 Q. --vs. Thompson. Did you have any involvement in
8 investigating that case for your office?

9 A. I didn't have any involvement investigating that
10 case for--in my role as employee of the State of Utah.

11 Q. Did your office have any role in investigating
12 that case?

13 A. No, sir.

14 Q. And you testified on behalf of the police officer
15 defendants or--

16 A. The agency defendants.

17 Q. I think I saw another one here in Utah.
18 Mitchell. Is that a use of force case? Yeah.

19 A. Oh, Mitchell vs. Dow?

20 Q. Yes.

21 A. Yes, sir.

22 Q. Did your office have any role in investigating
23 anything to do with that case?

24 A. No, sir.

25 Q. And I guess help me out: When does your office

1 get involved in a civil rights complaint and when don't they?

2 A. If there's a direct request from the aggrieved
3 party in a civil rights issue, under our state statute, an
4 aggrieved party has the ability to request the attorney
5 general to investigate a civil rights allegation. There are
6 other circumstances in which, for example, the agency known as
7 police officer--excuse me--Peace Officer Standards and
8 Training, which is--it's an agency responsible for licensure
9 and certification of law enforcement officers.

10 If, in the course of their investigation, they
11 believe that there has been substantial misconduct that might
12 involve violation of civil rights or criminal allegations,
13 they can refer a case for non-administrative investigation to
14 our agency. A county attorney or district attorney or a
15 police agency executive may make a similar request, or the
16 office does have the ability to self-initiate a civil rights
17 investigation.

18 Q. You also list Lexipol. Tell me about that.

19 A. Lexipol is a risk management service that
20 provides policy drafting and consulting services on a broad
21 scale for--I believe the current number's around 1,400 law
22 enforcement agencies throughout the United States--police
23 departments, sheriff's offices, district attorney offices,
24 state attorney general offices--as well as the same services
25 with respect to custody institutions, jails throughout the

1 United States and, to a somewhat lesser degree, to fire
2 services--fire departments.

3 Q. What type of services do they provide to law
4 enforcement agencies?

5 A. The primary service is to prepare policy manuals
6 and provide policy consulting to law enforcement agencies.
7 There are some other role in the context, for example, an
8 agency may be subject to some sort of monitoring by the United
9 States Department of Justice and Lexipol may assist that
10 agency in conforming its policies to consent decrees or
11 requests or instructions, persuasive comments by the
12 Department of Justice.

13 Q. And what--what do you do for Lexipol?

14 A. I work primarily in drafting and editing policy
15 in a number of areas.

16 Q. Like what?

17 A. My primary focus would be in use of force in
18 electronic control devices. Also, I referred to as conducted
19 energy devices or conducted energy weapons, police service dog
20 use, restraint use. Also would be--typically if there were a
21 search and seizure-related policy that would typically be one
22 that would come my way for editing and review or perhaps even
23 initial drafting.

24 Q. And when you say policy, is that the same as
25 we're going to be talking about later with the general orders?

1 A. Some agencies make a distinction between general
2 agencies and policies, but most of the time, sir, those terms
3 are interchangeable for most departments.

4 Q. So if Gallatin Police Department called Lexipol
5 and said, We want you to help us draft a use of force policy,
6 then that's something you would be involved in drafting and
7 editing?

8 A. Yes, sir, assuming that we agreed to go into that
9 state, yes.

10 Q. Okay. What else--and how long have you been in
11 your current position with the attorney general?

12 A. Since early 2005.

13 Q. And in addition to those two things, are there
14 any other things that you're doing today employment-wise? I
15 know you do some consulting, because we're here today.

16 A. Sure. I do some consulting. I occasionally
17 teach. I'm not teaching this semester, and I have not taught
18 for a couple of semesters.

19 Q. And what kind of teaching have you done?

20 A. Taught at the BYU law school, criminal procedure.
21 I--I--it actually has been more recent than the last couple of
22 semesters. I do teach at the police academy, although that's
23 not--not a typical college course. People can get college
24 credit for it.

25 Q. What do you teach at the police academy?

1 A. Use of force, search and seizure, teaching a
2 couple of the specialized courses with respect to the drug
3 academy on drafting and executing search warrants, teaching
4 the canine administrator's course, the canine handler's
5 course. And occasionally, I will go present a seminar for,
6 you know, a professional organization, whether it be a
7 continuing legal education program for the Bar--I have a role
8 in the Utah State Bar--or whether it be for a law enforcement
9 organization.

10 Q. Do you teach Taser use at the academy at all?
11 Certify or any of that stuff?

12 A. When you say at the academy, the answer is yes.
13 If you were to ask for the academy, the answer is no.

14 Q. Okay. Explain that one for me.

15 A. Sure. The Utah state police academy is located
16 on a college campus and it--it hosts--it's the training venue
17 because of its physical location and because of the physical
18 facilities that it is able to offer a number of training
19 opportunities that are not necessarily sponsored by the Utah
20 police academy. In Utah, we do not have as a component of our
21 basic training course for law enforcement officers a Taser
22 course, but Taser courses are offered at the police academy.

23 Q. If a city--let's say Salt Lake City--I'm sure
24 they carry Tasers. Do all the officers carry Tasers? Do you
25 know?

1 A. The Salt Lake City Police Department? The
2 majority, if not all, of the patrol officers in Salt Lake City
3 do carry Tasers.

4 Q. Would they conduct their own training or would
5 that be something they would send the officers to the academy
6 for this--for your training?

7 A. Salt Lake City being the second or third largest
8 police agency in the state and having its own training
9 facility, would typically do its own training in-house. And
10 I--I just happen to know that they have a number of certified
11 instructors within their agency.

12 Q. Your CV says you're a certified excited delirium
13 and sudden death investigation instructor?

14 A. Yes, sir.

15 Q. Who certifies something like that?

16 A. The Institute for Prevention of In-Custody
17 Deaths.

18 Q. Mr. Peters?

19 A. Yes, sir, John Peters. Do you know John?

20 Q. I--he was involved in another case I had.

21 So do--how did--how does he certify you to teach
22 these things?

23 A. They have an instructor course that is referred
24 to as a train the trainer course. You attend that course,
25 take an examination, and receive certification to teach the

1 curriculum that they present.

2 Q. And I guess they provide the materials for what
3 you teach?

4 A. They do.

5 Q. So I would imagine your opinions in that regard
6 are similar to his--

7 MR. McMILLAN: Object.

8 BY MR. BEDNARZ:

9 Q. --on the training that's required on excited
10 delirium and sudden death investigations?

11 MR. McMILLAN: Are you asking him to comment on
12 what you imagine?

13 BY MR. BEDNARZ:

14 Q. You can answer if you understand what I'm asking.

15 A. I'm not sure that I understand, but I'll do my
16 best. I--I certainly--I use the--when I teach a course, I use
17 the material that I glean from the IPICD course. And I have
18 read a number of Dr. Peters' publications and regularly attend
19 and occasionally present at the annual conference of the
20 Institute for Prevention of In-Custody Death. And I think
21 that Dr. Peters and I have some--I think we follow the same
22 general area of instruction, but I've never heard him teach
23 another group, so I couldn't say.

24 Q. Is that still held in Vegas every year?

25 A. Yes. It will be in Las Vegas again this year.

1 Q. Somehow I--I--obviously it was a mistake, but I
2 ended up there one year. I attended that seminar, but--

3 A. Well, it's open to--I think at least in Utah, you
4 can get continuing legal education credits for doing it.

5 Q. Yeah, I did.

6 It says you occasionally consult to provide
7 expert opinions on police procedures in use of force issues.
8 How often do you do that?

9 A. I typically will--from start to finish, typically
10 will handle four, five cases a year. It's obviously an
11 adjunct to my primary employment, so it depends. If the
12 attorney I work with regularly has two or three cases, I might
13 do more in a year. I think some years, I've done less.

14 Q. Do you ever testify on behalf of a plaintiff or
15 is it always the defendant?

16 A. I've testified on behalf of plaintiffs.

17 Q. Okay. Is there a percentage that you would put
18 on that?

19 A. I think it would be fair to say that the majority
20 of the work that I do is for defendants. The majority of the
21 calls I get, frankly, are for defendants. And about half the
22 time when I'm asked to testify on behalf of either a plaintiff
23 in a civil case or a defendant in a criminal case, I've
24 testified for them.

25 Q. And then some of your professional activities and

1 organizations--I'm just going to go through briefly--but
2 International Association of Law Enforcement Educators and
3 Trainers Association. What is that?

4 A. It is just what it sounds like. It's an
5 organization of people who teach law enforcement subjects that
6 puts out training updates, may have seminars on not
7 necessarily--both the substantive topics that are being
8 taught, but also better ways to involve the students in the
9 classroom, better ways to present training.

10 Q. And is that actually an international
11 association? Is it a national association or how would you
12 characterize that?

13 A. There are a number of members from Canada. And
14 I--I know one or two people from Europe. It's truly an
15 international organization.

16 Q. International Association of Chiefs of Police.

17 A. Boy, that truly is an international organization,
18 as evidenced by--if you go to the conference on uniform day
19 and you see these police chiefs from Africa who appear in the
20 most interesting regalia of their--of their organizations.
21 But that is a--the majority of the members there are, of
22 course, from the United States, but it's truly an
23 international organization.

24 Q. I take it you don't have to have a chief of
25 police to be a member?

1 A. You do not. There are different levels of
2 membership. There are--I think that there are lieutenants,
3 even, that are members.

4 Q. Okay. And can you tell me what that organization
5 is or what it does, the purpose of the organization?

6 A. Sure. It is, I believe--and I'm not certain
7 about this, Mr. Bednarz, but I believe it is the largest law
8 enforcement administrators organization in the world. I've
9 visited their headquarters in Washington, D.C. And it's a
10 huge organization. And there are--there are a number of
11 focuses that--primary focus is to better the delivery of
12 public safety services throughout the world, but again, I
13 stress that the majority of the members, I believe, are in the
14 United States, certainly all the conferences are in the United
15 States.

16 There's a large education and training component
17 there. There's a component that promotes officer safety that
18 has, you know, for example, right now, a significant campaign
19 to encourage police officers to do something as simple as
20 wearing seat belts, which, you know, you would think cops
21 would do, right, but many don't. And to wear vests. There
22 are a number of sections within that group; for example, legal
23 officers section, the Indian country section, the
24 psychological services section that deal with specific
25 subtopics and issues within law enforcement.

1 Q. And--

2 A. Is that--is that good enough?

3 Q. I think so. And I think we're going to come
4 across some model policies that they've--

5 A. They do--

6 Q. --put out.

7 A. --they do also have a model policy service, as
8 well as a training newsletter service.

9 Q. And I kind of moved forward, but let's go back to
10 your employment. And prior to going to work for the State of
11 Utah, what did you do?

12 A. Well, through 2001, I served as the chief deputy
13 county attorney in Uintah, U-i-n-t-a-h, County, Utah. I had
14 that role from, I believe, 1996. During that same time
15 period, I taught--I taught at the police academy for a long
16 time. Nearly--nearly twenty years. So that employment spans
17 that whole stretch. And also worked as a police officer
18 during that period of time as well.

19 Q. Okay. And how long were you a police officer?

20 A. Well, I--

21 Q. Or how long did you--

22 A. Still am. So first--

23 Q. How long did you work as a patrol officer, I
24 guess?

25 A. As a patrol officer? Full-time, on-the-road

1 patrol officer from 1982 to 1987 with some periods of
2 investigative assignments that, you know, took me off the
3 road, but I still had the rank of officer. And then from 1986
4 to two thousand--2000 or 2001, there was a period of time
5 where I worked for both Uintah County and for the State of
6 Utah, although not in my current position with the State of
7 Utah.

8 Q. From '86 to 2000, 2001, you were doing what?

9 A. From '86 or '96?

10 Q. After you were patrol officer, what did you do?

11 A. Okay. After I was patrol officer, I worked
12 part-time as a patrol officer for my first semester in law
13 school. I recognized that the American Bar Association knew
14 better than I did, you couldn't work and go--at least I wasn't
15 smart enough to work and go to law school. So I went to law
16 school till 1990. I--you know, I did this sort of typical
17 thing. In the summers, I worked in a couple of different law
18 firms. I graduated in 1990, took the Bar, worked for a law
19 firm in the summer.

20 Fall of nineteen--the late summer or fall of
21 1990, I went to clerk for the Utah Court of Appeals and did a
22 one-year judicial clerkship there, and then went to the fifth
23 circuit, where I clerked for Edith Jones, the chief judge of
24 the Fifth Circuit Court of Appeals in Houston, Texas. I came
25 back to Utah and practiced law for a couple of years. Did

1 enough law enforcement to keep my--my licensure, my
2 certification active, and then in '94 is when I went to Uintah
3 County.

4 Q. And while you were practicing law, what kind of
5 practice did you have?

6 A. Primarily employment law, public employment law,
7 law enforcement, you know, police and fire employment, some
8 civil rights work. I did a little bit of oil and gas
9 litigation, enough to know that it wasn't something I really
10 enjoyed, although at least in Utah, that's where the money is
11 right about now.

12 Q. Now, most of your publications are pretty
13 straightforward. I can see the title and the publication. At
14 the bottom, you say, ". . . a variety of columns addressing
15 law enforcement issues and published by policeone.com." What
16 is policeone.com?

17 A. policeone.com is a--it's a--both a website and
18 webinar provider and a newsletter provider, both in electronic
19 print, text, and also in video channel.

20 Q. And who--is there an organization behind
21 policeone or is it a private individual or do you know?

22 A. There's a--it's owned and operated by a large
23 publishing house, and I do not--in San Francisco. I can't
24 remember what--I can't remember what the name of the parent
25 corporation is.

1 Q. What kind of--when you say columns, do they
2 just--is that a monthly or weekly column that they put out
3 or--

4 A. They do a--they do a couple of different
5 newsletters. It would be fair to say they've got a newsletter
6 out every two weeks. I do not write every two weeks. I write
7 by invitation that--in terms of regular, you know, if you were
8 to target a schedule typically in October, I'll do a column
9 that predicts--strike that--predict's not the best word--that
10 looks forward toward the term of the United States Supreme
11 Court and criminal procedures issues--criminal procedure
12 issues that will be dealt with by the United States Supreme
13 Court. And then throughout the course of the year, I will
14 comment in columns on certain cases. I mean, a couple of
15 cases that are coming up, you know, targeted to do--to do
16 columns. And then from time to time, I'll be asked to explore
17 a certain issue. I haven't listed them individually, but
18 they're all--they're all out there on the Internet available
19 to be read.

20 Q. You've got a list of the cases that you testified
21 in, I guess, the last four years. I'm trying to go through
22 them. But do you know of any that are listed that you
23 testified on behalf of a plaintiff?

24 A. Let me just look at the list. What page is that?
25 Thirty-six?

1 Q. Well, actually, this is your CV. What I'm
2 looking at is separate.

3 A. Okay. In Ibarra vs. City of Watsonville, I think
4 that is responsive to your question. But in fairness, I was
5 retained there by the police department as--they were being
6 challenged by an individual police officer.

7 In Trammell vs. Jacksonville Beach City Police
8 Department in Florida, I was retained by and testified in
9 behalf of the plaintiff who was bitten by a police service dog
10 owned and deployed by Jacksonville Beach City Police
11 Department.

12 Q. Okay. Can you find any others on this list?

13 A. Well--

14 Q. Or--

15 A. --I don't think so. Let me look real quick.

16 Q. Or do you remember any others? I'm just . . .

17 A. I do not remember any others within the four-year
18 period where I've actually given sworn testimony either in a
19 deposition or court on behalf of a plaintiff.

20 Q. Do you remember the facts of Trammell?

21 A. I remember the general facts of Trammell, sir.

22 Q. Okay. I'm just curious what--what the facts were
23 that prompted you to testify for the plaintiff.

24 A. I'm not sure I understand what you mean by
25 prompted me to testify for the plaintiff.

1 Q. Well, obviously when you reviewed a case, it was
2 your opinion there was excessive force?

3 A. That's true.

4 Q. So I'm just wondering what the facts were that
5 formed the basis--

6 A. Oh, I see.

7 Q. --of that opinion.

8 A. All right.

9 Q. It was a poorly worded question, but I haven't
10 had much sleep.

11 A. I get it now. I thought you were going in a
12 different direction. Yes, I do remember those facts.

13 Q. Could you tell us about that?

14 A. Yes, I can, to the best of my--to the best of my
15 memory. Mr. Trammell was standing in a backyard at the time
16 that down the street, there had been a burglary committed. The
17 burglar was an African-American man--I don't recall his dress,
18 but the dress was significant--a younger African- American man
19 in pretty darn good physical condition, and in fact, he was
20 very athletic in his escape from the police and the police
21 actually saw him as he was running through the neighborhood.
22 And probably--he probably jumped up or climbed up and started
23 doing a rooftop thing, almost something that you would see in
24 the movies, going from rooftop to roof top. He was a very
25 athletic man, and very strong. The police were chasing him.

1 They lost sight of him. A police service dog team was en
2 route to assist and the police service dog team deployed the
3 dog at one of the last certain sightings of the suspect. I
4 cannot remember the suspect's name.

5 The dog led the handler and another officer to a
6 wooden fence. Mr. Trammell was on the other side of the
7 wooden fence in a pretty small backyard there in Jacksonville
8 beach. Mr. Trammell was talking on the telephone. There was
9 a baseball game going in the background. I think he was
10 talking about the score in the baseball game.

11 The dog started to pull through an opening, small
12 opening in the fence. The handler wasn't able to get through
13 the fence; he was too big. Ultimately, he broke through the
14 fence. The handler's testimony was somewhat divergent with
15 Mr. Trammell's testimony with respect to whether the handler
16 actually released the dog or the dog was simply able to reach
17 Mr. Trammell because the length of the leash. The dog went
18 into the backyard.

19 Mr. Trammell was a man of approximately our age--
20 my age, in his mid 50s. He was, in fact, approximately my
21 build. He was shorter than the suspect. He was nowhere near
22 as athletic and did not have the athletic build of the
23 suspect. His clothing was very different than the suspect's.
24 Again, I don't recall what the clothing was, Mr. Bednarz. I
25 just remember that there was a distinction in the clothing.

1 He was a middle-aged white man and not a young
2 athletic African-American man. And nonetheless, the dog was
3 released in the yard. The dog was trained in a--in a not
4 common training sport prior to becoming a police service dog.
5 And the dog leaped up and bit Mr. Trammell in a most unusual
6 way causing most unusual damage to Mr. Trammell and
7 significant damage to Mr. Trammell.

8 You talk about in law school the eggshell
9 plaintiff. Mr. Trammell was a very nice man. He, however,
10 had been the victim of esophageal--I think it was esophageal
11 cancer. He had cancer in the throat area. And the dog leapt
12 up, torqued its body sideways and engaged Mr. Trammell in a
13 throat bite in the front of the larynx and inflicted
14 substantial injury to his--his larynx. The injuries I
15 actually remember with great clarity. And--and that's--that's
16 what led to the lawsuit.

17 Q. Well, let's get into your actual report, I guess.
18 Page 1, you start listing the materials that you've reviewed.
19 Have you listed everything that you've reviewed?

20 A. I believe so.

21 Q. As you reviewed this case, was there anything
22 that you didn't have that you would have liked to have had?

23 A. No, sir, not--there wasn't anything that I
24 believed was available that I--I would have wanted to have.

25 Q. Have you brought your file with you today?

1 A. No, sir.

2 Q. Okay. What have you brought?

3 A. I have a copy of my report.

4 Q. So you don't have any of the materials that you
5 reviewed?

6 A. No, sir.

7 Q. Did you learn that in law school? You know I'm
8 joking.

9 A. No, I--I learned that it's a pain in the butt to
10 go to the room and get the box out and carry it up the stairs.

11 Q. I understand.

12 A. So unless I don't have to, I don't.

13 Q. When it's important--nowadays, if it's important
14 to bring the file, I'll send a notice out and tell you to
15 bring the file, so--because nobody brings them anymore unless
16 you tell them you'd better bring them.

17 A. We will get, I think, to the day that--I did this
18 presentation yesterday, and I just--I realized for whatever
19 reason this morning, I put my stuff in my pocket. And I've
20 got this little thumb drive, you know. My whole
21 presentation's on this thumb--we're going to get to the point,
22 I think, that there isn't going to be any more paper, but
23 we're not there yet.

24 MR. McMILLAN: Not soon enough for me.

25 Could we take a short break?

1 MR. BEDNARZ: Sure.

2 (Recess taken, 10:02-10:10 a.m.)

3 BY MR. BEDNARZ:

4 Q. Starting on page 3 of your report, No. 1, it
5 says, ". . . I have relied upon the documents, diagrams,
6 pleadings, records, reports, and statements previously
7 provided"--or "previously described. I have formed a number
8 of opinions based upon the aforementioned as well as my
9 experience, education, and familiarity with professional
10 publications." It goes on to say, "I have relied on a variety
11 of publications" Which--which publications have you
12 relied on in this case for your opinions?

13 A. As I formed my opinions--formed my opinions in
14 this case, there would have been some that I actually would
15 have referred to and then some that--just in general
16 knowledge. And that would include training material for the
17 Taser courses that are taught, Taser courses that I teach,
18 training material published by Taser International, as well as
19 I've written a couple of articles, and done policy work in the
20 area of police service dog use and Taser use.

21 Q. Would you consider your articles authoritative,
22 reliable?

23 A. As a general proposition or in specific articles?
24 There are some that I have written that are--are not meant to
25 be authoritative but rather to give a broad background and

1 illustration of a particular device or technique, to be more
2 of a survey article. There are others that are--I've done a
3 lot of review articles which are a right pain in the academic
4 brain.

5 Q. Have you done any law review articles that are
6 relevant to the issues in this case?

7 A. Do you mind if I just take a look at the--

8 Q. Uh-huh (Affirmative).

9 A. --list? I think I've given you ten years
10 of . . .

11 Yes.

12 Q. And which ones are those?

13 A. Starting at the very end of the publication list,
14 "Police Canine Risk Management," which was published by The
15 Municipal Lawyer. It's not an academic institutional law
16 review, but it is a peer-juried, peer-reviewed legal
17 publication published by the International Municipal Lawyer
18 Association. That was published in July 2002.

19 I did another article for that same journal in
20 July 2009. I--the title of that article is, "The Risky
21 Continuum: Abandoning the Use of Force Continuum to Enhance
22 Risk Management."

23 As we sit here today, Mr. Bednarz, I don't recall
24 the detailed text of either article. But that general subject
25 matter would impact some of the issues you've already

1 mentioned and some of the issues I've discussed in--in my
2 report. And that latter article that I cited, "The Risky
3 Continuum," is one that I presently have an article out for
4 peer review that follows up on that article. And it generally
5 talks about use of force issues.

6 Q. So The Municipal Lawyer is a peer-reviewed
7 publication?

8 A. Yes. It's a lawyer--I don't know if peer's the
9 right word, but they have a board of lawyer--editors that are
10 lawyers that do the Bluebook and the substantive fact checking
11 and all that sort of thing associated with an academic
12 institution's law review.

13 Q. Any other things that you would--any other
14 publications you would consider peer-reviewed?

15 A. On this list?

16 Q. Yes.

17 A. Let me . . .

18 Yes. Publications or just articles?

19 Q. Both.

20 A. Yes.

21 Q. And which ones?

22 A. The K9 Officer's Legal Handbook. Lexus-Nexus has
23 both copy editors, substance editors, and legal editors.

24 The other book listed there, Street Legal, A
25 Guide to Pre-Trial Criminal Procedure for Police, Prosecutors,

1 and Defenders--the American Bar Association has a very
2 rigorous legal editing board.

3 The ALEL--excuse me--AL--AELE--sorry--there was a
4 bit of dyslexia--Monthly Law Journal is peer-reviewed, but the
5 topic of that article, sir, has really nothing to do with
6 anything in this litigation.

7 The Corrections Manager Report is peer-reviewed,
8 but again, that article has nothing to do even remotely with
9 the topic of this litigation.

10 And then the book, Life in the Law, published by
11 BYU Press, was peer-reviewed.

12 Q. Would any of those publications be what we call
13 authoritative and reliable?

14 A. I believe that they would all meet that
15 definition.

16 Q. Can you remember any publications that you
17 specifically reviewed for this case?

18 A. Yes.

19 Q. Which ones are those?

20 A. I reviewed my--as a Taser instructor, I use the
21 Taser provided curriculum supplemented with my own material.
22 And I reviewed my material from Taser Version 14.0.

23 I also reviewed--I reviewed a couple of books.

24 Q. Which ones are those?

25 A. Well, I knew that question's coming, so I'm

1 thinking about them. I don't remember whether I reviewed--I
2 reviewed a book by Dr. Vincent DiMaio--D-i-M-a-i-o--and his
3 wife. What's her name? I've forgotten her name.

4 Q. Teresa?

5 A. Teresa. And I don't recall whether I reviewed
6 that book in the context of this case or another, but it would
7 have been about the same time.

8 Q. Okay.

9 A. And then there is a book on conducted energy
10 weapons, electronic control devices with a number of coauthors
11 that I believe that I--I reviewed one of the chapters with
12 respect to Taser injuries. And I don't--I don't--it's--it's
13 a--

14 Q. Blue book?

15 A. --a blue book. And Dr. Ho is one of the editors.
16 Dr. Ted Chan.

17 Q. All the good Taser experts, right?

18 A. Oh, gosh. The other guy from UCLA. Yes.

19 Q. Dawes?

20 A. If you told me the title, I would--it's blue.

21 Q. Yeah.

22 A. Yeah. Apparently you know the book I'm talking
23 about. It costs a lot.

24 Q. Well, let's get into the facts a little bit. The
25 last paragraph on page 3, you talk about Hill and Ford found

1 Woodward on Long Hollow Pike, while Shockley, King, and Alvis
2 went to the Rutter home. "Ms. Rutter told officers that
3 Woodward made the emergency call and she was not, in fact, the
4 victim of a home invasion. [And] she told the officers that
5 Woodward had been using drugs, including a recent
6 methamphetamine binge, and that he had been acting bizarrely."

7 Then the next paragraph: "At the same time,
8 Officer Hill was speaking with Woodward a short distance
9 away."

10 Do you know if those are happening at the exact
11 same time or how they unfold?

12 A. I believe they're substantially contemporaneous.
13 I don't know that it was precisely contemporaneous.

14 Q. Do you know when Hill and Ford got the
15 information that the mother was okay and that he was on drugs?

16 A. I believe I may have seen that in the reports,
17 but as I sit here today I don't recall precisely what moment
18 that happened.

19 Q. Now, in the next paragraph, where it talks about
20 Officer Ford arrived at that point to back up Officer Hill you
21 say, ". . . Woodward appeared to be possibly intoxicated and
22 he was somewhat agitated, [but] officers reported nothing
23 beyond the emotional agitation that one might expect to see in
24 the victim or witness of a home invasion and kidnapping."

25 Have you read the depositions of Ford and Hill?

1 A. Yes, sir.

2 Q. You know--do you remember when they were talking
3 about he was geeking out?

4 A. I don't remember whether they both used that
5 term, but I remember the term because it struck me as
6 colloquial.

7 Q. Explain that for me.

8 A. "Geeking out" is not a--was not a--was not--is
9 not a term that has a precise meaning to me.

10 Q. So you would have to rely upon them to define
11 that term for you, I guess?

12 A. It would--it would be helpful if they used a term
13 that was more susceptible to common meaning.

14 Q. Okay. I'm going to try to skip through this or
15 we'll be here all day, but next paragraph down, you say ". . .
16 Ford needed to remain at the Rutter Woodward home to continue
17 his investigation. . . ." Why would Ford have to stay?

18 A. Ford--at this point, Ford was--that's--that's the
19 role that he had assumed, been delegated to in the course of
20 the investigation. It could be possible that someone else
21 could--could have taken over that responsibility, but that's
22 the way the circumstances unfolded.

23 Q. Okay. We had three officers go to the home. He
24 wasn't one of them, right, initially?

25 A. Initially, correct.

1 Q. And then Officer Hill was the first one that
2 encountered him walking down Long Hollow Pike, correct?

3 A. Officer Hill was the first one that encountered
4 Mr. Woodward, correct? Is that what you're referring to?

5 Q. Yes.

6 A. Yes.

7 Q. So why is it necessary that Ford remain at the
8 house?

9 A. Again, it is possible that someone else be
10 designated to stay at the house, but that was the role in
11 which Officer Ford was--was placed and he's the one who's
12 actively undertaking the investigation, getting the
13 information for the report.

14 Q. Are you critical at all of Officer Ford for
15 putting Woodward in the back of his police car without putting
16 cuffs on him, without searching him?

17 A. I'm not critical at all for putting him in the
18 back of the police car at that point without handcuffing him.
19 That's--that's a--at this point, that's an issue that I think
20 many officers would not have handcuffed Mr. Woodward as they
21 put him in the back of the car.

22 The searching typically is incidental to the
23 handcuffing, not always, so no.

24 Q. Okay.

25 A. It could have unfolded differently, but in this

1 case, no.

2 Q. You've got a man that's been using drugs. He's
3 obviously under the influence of something when they
4 encountered him. He's walking down the street with a large
5 knife. Wouldn't that make you concerned as a police officer
6 that maybe he's got another weapon?

7 A. It could.

8 Q. The end of the paragraph, you say, "Woodward
9 showed no signs of a medical emergency or violent resistance."
10 What are the signs of a medical emergency?

11 A. Signs of a medical emergency can be widely
12 divergent and it can be just a wide array of symptoms, but Mr.
13 Woodward didn't show any signs at this point that a police
14 officer would typically interpret as leading the officer to
15 believe that this--that Mr. Woodward was experiencing a need
16 for urgent medical care.

17 Q. What should an officer be looking for at that
18 point?

19 A. At--

20 Q. In terms of assessing whether or not there's a
21 medical emergency? How do you make that determination?

22 A. Well, I suppose the most common thing that an
23 officer would look for is the person showing some kind of an
24 injury. So Woodward is reporting that there had been--I
25 believe it was two or three black men that had invaded his

1 home. First thing cop's going to look for: Is there some
2 external injury? Is he bleeding? Has he been punched? Has
3 he got a broken nose? That sort of thing.

4 Q. And at this point, you're assuming that the
5 officers believed what he was telling them?

6 A. I have no reason to assume otherwise at this
7 point.

8 Q. Do you know what they testified to, Ford or Hill,
9 in their depositions about whether or not they believed what
10 he was saying?

11 A. I don't recall what their testimony was--what
12 they thought at this particular--at the point that there's the
13 placement in the back of the car.

14 Q. If they didn't believe what he was saying, does
15 that change anything about putting him in the back of the
16 police car without searching him or handcuffing him?

17 A. Not necessarily.

18 Q. Why not?

19 A. They made a judgment call based on what they had
20 observed, what they'd observed about his behavior, what they'd
21 observed about whether he was injured or not, what they
22 observed about whether he had any visible weapons, what they'd
23 observed about his reporting. And I'm not critical of the
24 result of that judgment call.

25 Q. Would a medical emergency include a mental health

1 crisis?

2 A. It could.

3 Q. And what are the signs of a mental health crisis?

4 A. And much like a medical emergency, those signs
5 can be widely divergent. And for example, my spouse, who's a
6 trained medical professional, might see something very
7 different than the same behaviors I would as a law enforcement
8 officer. For a law enforcement officer, typically the signs of
9 a mental health crisis are going to be, you know, signs that
10 are fairly profound and observe--than something that a
11 layperson might observe.

12 Q. Well, officers are trained or should be trained
13 to recognize a medical emergency and/or a mental health
14 crisis, aren't they?

15 A. Officers receive training in both first aid and
16 in dealing with persons with mental--in mental crisis. I
17 won't say with mental illness, because that's--that's pretty
18 darn broad.

19 Q. What signs would they be taught to look for?

20 A. Again, the officer at the scene is going to be
21 most concerned with physical manifestations: Is this person
22 acting out? You can have a person who is profoundly mentally
23 ill, but who doesn't really act out. And even if they're
24 acting out, there can be a wide range there.

25 You might have somebody who is--I recall one

1 call, for example, where a person was experiencing a deep
2 mental health crisis and was sitting in a corner balled up and
3 almost catatonic as contrasted with--with another person that
4 I dealt with, who insisted that there were alien invaders
5 surrounding us and ended up attacking me because she perceived
6 I was one of those alien invaders. But the cop on the
7 street's got to look for the external behavior.

8 Q. So she was delusional?

9 A. She was. I was not an alien.

10 Q. Is delusion one of those things you look for?

11 A. It is--it is. Again, it depends on delusions and
12 the profundity of the delusions, but it is something you look
13 at.

14 Q. Is there a source we could go to if we wanted to
15 say these are potential signs of a medical crisis or mental
16 health crisis?

17 MR. McMILLAN: I'm going to object just to the
18 vagueness of--I mean, any source in the world? I mean, I'm
19 not sure . . .

20 BY MR. BEDNARZ:

21 Q. You can answer.

22 A. I think that--I could speak with some authority
23 with respect to the curriculum, for example, at the Utah State
24 Police Academy. I can't with respect to the police academies
25 operated in the state of Tennessee. But typically, officers

1 are trained in first aid in their police academy experience.
2 Typically, you know, one of the more common medical
3 emergencies that police officers deal with, you know, heart
4 attacks and so forth. So typically, they have cardiopulmonary
5 resuscitation courses. And typically, there are at least
6 survey courses presented in police academies with respect to
7 acute mental health crises. And many times, that's a subject
8 of in-service training in a police agency. So with respect to
9 sources, you know, I think that we would--we would look to
10 basic police training and then in-service training offered to
11 police officers.

12 Q. Okay. Are you familiar with that training at the
13 Utah state academy?

14 A. I don't--I'm familiar with it. I've attended it.
15 I don't teach it.

16 Q. What do they teach in terms of looking for mental
17 health crisis?

18 A. Excuse me. Honestly it's been long enough that I
19 can't really--I can't really tell you. I know that there are
20 courses unfolding even now in crisis intervention, but I'm far
21 enough removed from being . . .

22 Q. How about excited delirium? What are the signs
23 somebody may be experiencing excited delirium?

24 A. Officer taught--about this phenomenon on excited
25 delirium, which some medical professionals say is a diagnosis;

1 others say it is not, but there are some significant signs
2 that are commonly taught to officers. For example, someone
3 who is--some of the more significant signs, someone who's
4 hyperthermic--they're very hot to the touch, they are sweating
5 noticeably and visibly. And that hyperthermia, coupled with
6 mental health issues, often causes people to disrobe. That's
7 one of the very most common and very most commonly presented
8 signs of excited delirium.

9 Another is that a person under--in a state of
10 excited delirium would be aggressive toward glass,
11 particularly light--lighted glass or aggressive toward large
12 reflective glass, plate glass windows and so forth, would
13 actually charge at shiny glass and illuminated glass that a
14 person, even in a state of being disrobed and--even in a state
15 of being disrobed when--when the ambient temperature is cool,
16 that that person would be slippery and wet to the touch.

17 Growling or guttural noises, guttural speech,
18 deep bass speech is a significant sign of--and when I say
19 speech, I mean, you know, animal-type sounds is a significant
20 sign associated with excited delirium.

21 Certainly some form of delusions. A number of
22 cases where I have seen behaviors that medical professionals
23 would later have characterized as excited delirium involved a
24 person believing, in one case, that he was the destroying
25 angel as mentioned in the Bible, another person being--

1 believing that he was the Messiah. Strength that is described
2 as being superhuman in nature is a common and significant sign
3 of excited delirium.

4 And Mr. Bednarz, as I'm using the--I don't recall
5 if your question was clues or symptoms or signs, but as I'm
6 using those terms, I'm using them interchangeably. I'm not
7 using them from a perspective of a medical professional,
8 because frankly, you know, physicians disagree on whether this
9 is an actual diagnosable syndrome or not.

10 Q. I'm asking from the perspective of a police
11 officer.

12 A. And that's what I'm trying to communicate to you,
13 sir, is what cops are taught and not necessarily what an
14 academician in the medical community would tell you.

15 Q. Would agitation be one?

16 A. Agitation often is.

17 Q. Confusion?

18 A. It can be.

19 Q. And I think what you were describing just now,
20 delusions?

21 A. Particularly delusions about one's self-identity
22 and self-orientation.

23 Q. And then at the bottom of the page, you talk
24 about ". . . Perry began to search Woodward. . . . Shortly
25 after Perry touched him and without apparent reason, Woodward

1 instantly became enraged" Well, there was an apparent
2 reason, wasn't there?

3 A. I'm sorry?

4 Q. There was an apparent reason that he became
5 enraged, wasn't there?

6 A. It--I don't want to quibble with words, but there
7 was a--there was an action. Perry, first, as a cop, typically
8 would, said, Look, in a very friendly tone--I can't remember
9 his exact words. He said something like, Let me search you.
10 Let me frisk you. I'm going to touch--I'm going to pat you
11 down, I think is what he said.

12 Q. Well, we know what--well, I don't want to cut you
13 off.

14 A. I'm sorry. And then there's a touch. When I say
15 without apparent reason, that typically would not be a cause
16 for someone to become enraged and become combative.

17 Q. But we know why he did in this case, right?

18 A. Well, that's the theory.

19 Q. He--

20 A. Sure.

21 Q. --thought something was put in his pocket?

22 A. That's what he expressed.

23 Q. And that's part of--I guess that's--means he was
24 delusional?

25 A. I don't believe that Officer Perry--I believe

1 that Mr. Woodward thought that Officer Perry put something in
2 his pocket. And I don't believe Officer Perry did that, so
3 you can call that a delusion.

4 Q. Do we know for sure?

5 A. You call it a mistake of, you know, feeling a
6 finger and thinking: Something just went in my pocket.

7 Q. Do we know for sure whether or not he put
8 anything in his pocket?

9 A. I do not.

10 Q. We have to rely upon what the officer says in
11 that case, I guess?

12 A. That's the best available information to me.

13 Q. Do you know if anything was ever found in his
14 pocket?

15 A. Sir, I may have seen the contents of his pockets
16 listed somewhere in autopsy or medical records, but if I did,
17 I do not recall them.

18 Q. It says, ". . . Woodward instantly became
19 enraged" Tell me what you mean by the word enraged
20 and how he became enraged.

21 A. His comportment, his behavior went from someone
22 who, to this point, had been pretty cooperative, had been
23 engaging the officers in dialogue, had been cooperative with
24 the direction given by the officers. And he became a very
25 highly aroused, emotionally aroused--agitated, I think, was

1 the word you used. And I would say very agitated in that he
2 began to contort, to twist, to push and pull away. His voice
3 went up.

4 Q. Okay. Enraged means like angry, doesn't it? Do
5 you think that's a proper word, enraged for what was going on?

6 A. I think we could talk about different words, but
7 as I looked at the video and as I read the reports, that's the
8 word that came to my mind.

9 Q. And it says he quickly became combative. How do
10 you use that word and what do you mean by he became combative?

11 A. He became actively and physically resistant to
12 the officers' efforts to control him. He became--he began to
13 struggle and twist, as you can--as you can see in the video,
14 to pull away from--from the officers, to torque or to move his
15 body in a resistive way.

16 Q. Now, do--when you looked at the video and Officer
17 Hill tells him, Calm down or we're going to use the Taser, did
18 you see Officer Hill pointing the Taser at him?

19 A. I did see the Taser pointed at some point, but I
20 don't--I'm not sure, sir, exactly at what point.

21 Q. Do you ever remember the red light being on him?

22 A. I believe so.

23 Q. Okay.

24 A. It's been several months since I looked at that
25 video.

1 Q. Yeah. Have you seen anything to suggest that the
2 red light sometimes makes people that are under the influence
3 of drugs--it scares them and they run?

4 A. I have not. I suppose that's a possibility.

5 Q. Now, officers are required to use the least
6 amount of force to accomplish the task, correct?

7 A. Officers are required to use a reasonable amount
8 of force. That's often the least amount.

9 Q. Is there any reason Officer Hill couldn't have
10 just grabbed the other arm rather than pull his Taser out?

11 A. That's something that was certainly within the
12 realm of possibility. Now, it may not have been the best
13 judgment call based on what Officer Hill saw, but that's
14 certainly something that is within the realm of possibility.

15 Q. And according to the force continuum at Gallatin
16 Police Department, grabbing his arm would have been lower on
17 the continuum than the Taser?

18 A. It might--might have been. I've seen fairly
19 significant injuries result from grabbing an arm and, in fact,
20 suffered a very significant injury and have metal pieces in my
21 shoulder today as we speak from a very similar grabbing of the
22 arm. I would have preferred a Taser.

23 Q. Tell me about the Taser training that these
24 officers received. Is it similar to what you teach?

25 A. It was.

1 Q. And then I noted in your report that you
2 indicated that both of these officers scored 100 percent on
3 the test that's given after the course?

4 A. I believe that's--I'd want to go looking through
5 the training records, but I believe they did score 100
6 percent.

7 Q. Do you know if these officers were provided with
8 the answers to the test?

9 A. I would expect that the answers were discussed in
10 the material. That is, if they had been paying attention in
11 class, they should have heard, you know, the answer. There's
12 things like nomenclature, operation of the Taser. It would be--
13 a good instructor should present all of the material that's
14 tested on in the course of the Taser training course.

15 Q. Do you know if they get to use their notes when
16 they're taking this test?

17 A. When I teach the course, they don't get to use
18 their notes and that's the prescription. I don't know what
19 happened in this particular--

20 Q. Okay.

21 A. --course.

22 Q. Have you looked to see if everybody at Gallatin
23 scored 100 percent on their test?

24 A. I did not.

25 Q. Okay. Would you think an officer that completed

1 that training would know the optimal--optimal distance for
2 deploying a Taser?

3 A. An officer who completed that training should
4 understand the impact of distance and--and effectiveness of
5 the Taser. Optimal, sir, can depend on some different
6 circumstances.

7 Q. Okay. Well, you teach that the Taser shouldn't
8 be fired--it's less effective if fired within three feet of
9 the suspect, don't you?

10 A. The closer the suspect, typically--typically, the
11 less of the probe spread. That can change with body angles,
12 but typically that's the case. And less of a probe spread,
13 the less musculature that is impacted, typically.

14 Q. Did you read Officer Hill's deposition where he
15 believes the closer the probes are, the more effective it is,
16 the more incapacitation you have?

17 A. I believe I read something. Whether it was
18 Officer Hill's deposition or not, I do not recall. I'd have
19 to go back and look and see if that was said in his
20 deposition.

21 Q. Is that an indication that the training wasn't
22 effective for an officer to be that wrong about something like
23 that?

24 A. Not necessarily. It may be that he misspoke in
25 his deposition or he may have been confused by the question or

1 he may have had an misapprehension of what the instructor said
2 or he may have just plain forgot.

3 Q. Do you remember from that deposition, I asked it
4 three or four different ways and got the same answer?

5 A. I remember something, but I'm--I'd want to see
6 the deposition, but I--

7 Q. Do you remember me sounding surprised when he
8 said that?

9 MR. McMILLAN: Objection to--witness wasn't there
10 to hear you sound any way.

11 THE WITNESS: Yeah, I remember the discussion,
12 sir. I'll just leave it at that.

13 BY MR. BEDNARZ:

14 Q. That was a good question.

15 A. That was a good question, sir.

16 Q. A well-trained officer should know that when you
17 use a Taser, the wider the spread, the more effective it's
18 going to be, correct?

19 A. Okay. Now, that's not an absolute. But as a
20 general proposition, the wider the spread across major muscle
21 groups, assuming that the deployment is successful, then--then
22 the Taser is more effective at achieving neuromuscular
23 incapacitation?

24 (To the reporter) Do you need that spelled?

25 THE REPORTER: (Moves head from side to side.)

1 THE WITNESS: Okay.

2 BY MR. BEDNARZ:

3 Q. Then you go on to say, "Woodward bolted from the
4 officers and ran into a shallow, grass-lined ditch. He
5 stumbled, rose, and ran again, breaking the Taser wires." When
6 did the Taser wires break?

7 A. I can't ascertain precisely when they broke.

8 Q. Okay. Do you know if they broke before the first
9 cycle ran?

10 A. I do not.

11 Q. Do you know if they broke before the second
12 trigger pull and the second cycle?

13 A. I don't know that for a fact.

14 Q. Would you agree that Woodward goes down
15 simultaneously with the trigger pull, the first one?

16 A. It's pretty darn close.

17 Q. Okay. Would you agree he was on the ground for
18 five seconds?

19 A. I don't recall that I timed it then. And I don't
20 recall that now.

21 Q. Would that be important in trying to figure out
22 whether or not this Taser was effective and worked properly?

23 A. It could be a factor.

24 Q. Do you know what Officer Perry was doing during
25 this five-second cycle?

1 A. I don't recall Officer Perry's position at that
2 point.

3 Q. Do you remember seeing the video, seeing Officer
4 Perry standing back watching and giving commands to roll over?

5 A. No. I remember someone giving commands. I don't
6 recall--I--I believe that it was Officer Perry. I'm not
7 certain.

8 Q. Okay. Does Taser training teach that when the
9 suspect goes down, this five-second cycle is a window of
10 opportunity and the officers should move in and try to get
11 custody of the suspect, get control of the suspect?

12 A. That would be an--under optimal circumstances
13 that would be best to handcuff under--within that window of
14 opportunity.

15 Q. And that's because after the five-second cycle
16 runs, the neuromuscular incapacitation stops and they can get
17 up and move again?

18 A. Full neuromuscular incapacitation does stop at
19 the moment that the energy cycle ends. And typically, a
20 person is able to move at that point or shortly thereafter.

21 Q. And would you agree that a Taser does not take a
22 suspect into custody?

23 A. I would agree with that.

24 Q. It doesn't matter how many times you pull the
25 trigger, you're not going to get him into custody unless

1 somebody moves in and takes control of him?

2 A. Not as I would use the term custody, no.

3 Q. I guess I used the wrong word. I guess that--
4 yeah. I told you I didn't get much sleep, so every once in a
5 while, I may go brain dead.

6 A. I'm pretty sure you've got more than me.

7 Q. Let's see. Now, while this five-second cycle is
8 running and there's no neuromuscular incapacitation, a suspect
9 can't follow orders and roll over, can they?

10 A. Often a suspect cannot. Sometimes a suspect can.

11 Q. Did you look at the video to see if Woodward
12 might have been trying to roll over and follow the commands?

13 A. I couldn't tell whether he was trying to roll
14 over and follow the commands or not.

15 Q. And we'll look at it in a few minutes, but I'm
16 just trying to see what you remember.

17 Did you see Woodward up on the hood of the car
18 later on?

19 A. Yes, sir.

20 Q. And do you know if the second Taser application
21 came while he was on the hood of the car?

22 A. I don't recall. I don't believe so.

23 Q. Do you know what made him fall off of the car?

24 A. I do not know.

25 Q. It says, "The Taser touch mode deployments

1 appeared to have no effect." What do you mean by that?

2 A. That when the Taser was applied to him in touch
3 mode, it did not appear to impact his behavior.

4 Q. You're not suggesting that it ought to have
5 neuromuscular incapacitation in the touch mode, are you?

6 A. It--in certain circumstances, it can.

7 Q. And if one of the probes is still embedded, it
8 can?

9 A. Yes, sir. Embedded or within contact--contact
10 distance.

11 Q. So both probes don't necessarily have to be in
12 the skin--

13 A. Correct.

14 Q. --for the Taser to work? Somewhere in here you
15 say that the Taser was making a loud sound. You know what I'm
16 talking about?

17 A. I don't know where it says it, but I know what
18 you're talking about.

19 Q. Okay. And I think you say that that's a sign
20 that it was not working properly?

21 A. It--that is a sign that it's not working
22 properly.

23 Q. Okay. Does it also make a loud sound in the
24 touch mode?

25 A. In touch mode, it's typically more audible than

1 it is in probe mode, but it's not as loud as the clacking or
2 the rata-tat-tat arcing when there's not actual contact.

3 Q. Now, if you've got one probe embedded in the skin
4 and the other probe is just in contact, do you still get the
5 loud sound, arcing sound?

6 A. One probe embedded in the skin and the other
7 probe in contact with what?

8 Q. Well, that's your phrase you used a while ago--a
9 while ago, I believe.

10 A. When you say embedded, the Taser may have effect
11 without actually being embedded in the skin. It may be
12 embedded in an item of clothing, for example, or a--sometimes
13 even in a fabric or a leather or false leather belt.

14 Q. Sometimes just laying next to the suspect on the
15 ground, too?

16 A. That's pretty unusual, but that can happen.

17 Q. Okay.

18 A. So when--when I--when I said contact, I just
19 wanted to distinguish between the barb of the probe--have you
20 seen the end of the probe, the--

21 Q. Yeah.

22 A. --being different from the barb of the probe
23 actually having penetrated the flesh and the flesh.

24 Q. In those cases when it hasn't penetrated the
25 flesh but it's still effective, do you get the loud arcing

1 sound?

2 A. Typically not.

3 Q. But sometimes do you?

4 A. You do, but again, that--if you get a loud sound,
5 that's a sign that you aren't actually having current
6 delivered--

7 Q. Okay.

8 A. --to the person.

9 Q. And if you have one probe in the suspect and then
10 you apply a touch stun, it works the same as if you've got two
11 probes on him, correct?

12 A. Optimally, it should.

13 Q. And in that case, would you have the loud sound?

14 A. Again, typically, it would not be--you may hear
15 an audible difference, but it would not be that loud clacking
16 sound that you would hear like you hear on television when
17 somebody's demonstrating a Taser.

18 Q. When you say typically, sometimes you do get the
19 loud sound?

20 A. I've personally never witnessed it. I have been
21 told by one individual that it happened to that person. I
22 don't know whether the person was actually receiving current
23 or not, though.

24 Q. Let's talk about Alex. It says, "Alex was able
25 to push open the center door of the car kennel, jump out [of]

1 the front passenger window from Officer Hill's patrol car and
2 run up to Woodward." Are you sure it was the window he got
3 out of?

4 A. Meaning the front passenger window?

5 Q. Yeah. Have you seen anything to indicate that
6 maybe the door was open?

7 A. I believe that it was a window.

8 Q. It says, "Officer Hill commanded Alex to move to
9 a bark-and-hold position" At what point did he do
10 that?

11 A. He's--Officer Hill gives that verbal command
12 after there has already been a bite, after Alex has gotten out
13 of the car, has come up to Woodward and has bitten Mr.
14 Woodward.

15 Q. What else was going on at the time that he bit
16 him?

17 A. Well, you still had the officer struggling to try
18 and control Mr. Woodward at that time.

19 Q. Do you know what position Mr. Woodward was in
20 when the dog bit him?

21 A. I don't remember.

22 Q. Do you remember where he bit him?

23 A. I'd have to go back and look at the pictures.

24 Q. Back of the thigh refresh your recollection?

25 A. Well, it was in the leg, but I'd have to--I'd

1 have to take a look. And if you say it's the back, then I
2 think that's correct.

3 Q. If he's on the ground and he's bit on the back of
4 his thigh, would that suggest he's facedown at the time?

5 A. Either facedown or turned on his side.

6 Q. And--

7 A. It would suggest that he's not on his back.

8 Q. And he's got his hands cuffed behind his back,
9 too?

10 A. At this point, he does.

11 Q. Did Officer Hill encourage the dog in any way
12 while he was biting Mr. Woodward?

13 A. I don't recall any commands that I would
14 interpret as encouragement.

15 Q. Do you remember repeated statements, Good boy,
16 good boy?

17 A. That--that doesn't necessarily encourage a bite.

18 Q. Okay. Okay. What does it do?

19 A. It may simply reinforce the dog is being obedient
20 or it may keep the dog focused on the suspect rather than have
21 the dog turn the focus to the officer.

22 Q. Do you know how long he went on with Officer Hill
23 saying, Good boy, good boy?

24 A. I don't. I don't recall the timing.

25 Q. I hate to do this, but I've got to take a short

1 break.

2 A. I was hoping you would.

3 (Recess taken, 11:03-11:11 p.m.)

4 BY MR. BEDNARZ:

5 Q. Paragraph (b), you say, "Gallatin Police
6 Department officers' detention of Woodward was consistent with
7 actions of reasonable, well-trained officers and was
8 consistent with generally accepted police policies, practice,
9 and training." When you say generally accepted policies,
10 practice, and training, what do you mean?

11 A. We don't have, in the United States, a national
12 police force. We have tens of thousands of police agencies
13 ranging in size from two and three officer departments.
14 Majority of the agencies in this country are fewer--have fewer
15 than 15 officers all the way up to organizations such as the
16 New York Police Department, with tens of thousands of
17 officers. So there isn't a national standard, but there is, I
18 believe, a general agreement as manifested in policies that
19 are commonly accepted throughout the United States that I
20 think is fair to define as generally accepted policies,
21 practices. And the same thing could be said of training.
22 While training varies from state to state, there is a general
23 core foundation of training.

24 Q. And in reaching that conclusion, do you look at
25 things like the model policies put out by the International

1 Association of Chiefs of Police or is there--are there sources
2 you rely upon?

3 A. There--there are a number of model policies.
4 International Association of Chiefs of Police promulgates
5 model policies. There are a couple of firms out there that
6 sell model policies. There are model policies promulgated by
7 prosecution groups, by municipal risk management pools, and so
8 forth. So sure, all of those might be a source to look to for
9 what is generally accepted.

10 Q. Would the actions consistent with--well, what
11 standards govern the conduct of police officers?

12 A. Where?

13 Q. In this country.

14 A. Each individual state will have its own state
15 licensure or certification standards. Each agency will
16 promulgate its own standards of conduct. In some states,
17 there are state statutes that govern standards of conduct.
18 Certainly at the judicial level, we have pronouncements from
19 the United States Supreme Court, federal courts of appeal,
20 state supreme courts, other lesser courts that establish
21 standards of conduct for law enforcement officers.

22 Q. Paragraph 1, it says, "When the officers learned
23 from Sandra Rutter that she was not the victim of a home
24 invasion and kidnapping, the officers knew that there was
25 probable cause for an officer to believe that Woodward had

1 committed one or more violations of TCA 39-16-502, [which is]
2 false reports." And then you go on to state that's a felony.
3 Is that a felony in Tennessee, making a false report?

4 A. That's--that's my understanding, that a violation
5 of that statute is a felony.

6 Q. Is it a serious crime?

7 A. I'm not sure what you mean by serious.

8 Q. Well, at the same time that they found out that
9 she wasn't the victim of a home invasion and kidnapping, the
10 officers also knew that Mr. Woodward had been doing drugs?

11 A. They--they learned that from--Mr. Woodward's
12 mother told them that the same general time frame, yes.

13 Q. They also learned that he was delusional and
14 confused? They knew by then?

15 A. Certainly had indications of that, yes.

16 Q. Paragraph 3: "A reasonable and well-trained
17 officer would have arrested Woodward for violation of these
18 statutes." Would they have done that even if he was in the
19 middle of a medical crisis?

20 A. Not necessarily.

21 Q. For instance, if he had a bullet in his chest,
22 they wouldn't have, right?

23 A. I would expect not, although it could happen.

24 Q. Okay. Don't they have enough information at this
25 point to know that he needs medical help?

1 A. I don't believe at this point that it was obvious
2 that he had a medical condition.

3 Q. When did it become obvious?

4 A. I'm not certain when it became obvious to the
5 officers. There is a point at which--I believe that Officer
6 Ford was the first to request medical attention. I'm not sure
7 who the first--I don't recall.

8 Q. Okay.

9 A. I need to look through here. But at some point,
10 you've got three different officers calling for medical
11 attention.

12 Q. And all of those occurred after the struggle,
13 correct?

14 A. Right after some struggle, yes.

15 Q. Same paragraph, you say, "At the time Woodward
16 was arrested, he was not in apparent mental health crisis."
17 When do you consider--when was he arrested?

18 MR. McMILLAN: I'm sorry, Joe. Which paragraph
19 are you on?

20 MR. BEDNARZ: Paragraph 3 on page 7.

21 MR. McMILLAN: Okay. Okay.

22 BY MR. BEDNARZ:

23 Q. Is there--let me rephrase that. Is there a
24 difference between detention and arrest?

25 A. Yes.

1 Q. In this case, when was he detained?

2 A. Well, he was certainly--there was an effort to
3 detain him as soon as the officers tried to place him in
4 handcuffs. Detention is a legal conclusion that--you know,
5 your courts may differ from my view. It may differ from Utah
6 courts on that.

7 Q. Is it your opinion that he wasn't being detained
8 when they put him in the back of Ford's police car on Long
9 Hollow Pike?

10 A. I think a judge in Utah, under some of the case
11 authority we have here, would find that he was not being
12 detained as defined in our fourth amendment and fourth
13 amendment analog here.

14 Q. Okay. What about at the time that they arrived
15 at his house and left him in the back of the car with no way
16 to get out?

17 A. Again, at that point, I think that one could make
18 the argument and I think I could see a judge finding he was
19 not detained.

20 Q. Okay. Why is that?

21 A. Based on some case law that we have here with
22 respect to whether he had expressed any interest in leaving,
23 whether he was appearing to cooperate with the officers in
24 their investigation at that point, what language of command
25 the detention--the officers had his used. I'm not sure a

1 Tennessee judge would reach the same conclusion because I'm
2 not--not prepared to offer an opinion on Tennessee law.

3 Q. Okay. At what point was he considered under
4 arrest, in your opinion?

5 A. I would consider him to be under arrest when the
6 officers are attempting--putting him in handcuffs and have the
7 intent to take him to--to the detention facility, to the jail.

8 Q. So that would be the point where--approximately
9 the time where they're taking him out of the back of Ford's
10 vehicle?

11 A. Approximately that time, yes, sir.

12 Q. You've got--I don't--I don't want to summarize
13 it. How does an officer decide which suspects to take to jail
14 and which ones to take for medical treatment?

15 A. You--you gave me the example earlier of a suspect
16 who had a bullet hole and I mentioned to you earlier someone
17 who had an obvious injury such as a broken nose or bleeding
18 wounds that, you know, any reasonable person would say, Hey,
19 that looks like it requires medical attention. So there's
20 a--you know, there's a continuum there. And each circumstance
21 is going to be a little bit different.

22 Q. Okay. In your report, you say, "Officers are
23 trained that some incidents initiated as a call for police
24 intervention in an alleged crime may be best resolved by
25 referral for mental health services." What training do they

1 receive as to which ones are best resolved by mental health
2 services?

3 A. Officers should be trained in their basic
4 training in the police academy, first off, the premise you
5 mention, not everybody needs to be arrested when there's a
6 call for service. But there are times when a person's
7 misbehavior, though it might be criminal--it might be found to
8 be criminal, it might be that their need for mental health
9 treatment is more significant, is more apparent, and would
10 take priority over the processing of that person through the
11 criminal justice system, or that the person's criminality
12 could be addressed at a later point in time. I am assuming
13 that in Tennessee, there is a system similar to most other
14 states; that is, a complaint and summons where a person might
15 have criminal charges filed at a later time through a means
16 other than effecting a custodial arrest and getting them into
17 the criminal justice system through that means.

18 Q. How does the officer make the decision where to
19 take them?

20 A. Where to take them?

21 Q. (Moves head up and down.)

22 A. As opposed--between a mental health facility and
23 a jail?

24 Q. Yeah.

25 A. Well, that's going to depend on a variety of

1 circumstances, a variety of conditions. For example, does the
2 jail have an assessment for mental health needs?

3 Q. Okay. Let me--let me be more specific.

4 A. Okay.

5 Q. In this case, did these officers get any training
6 in how to determine who to take to jail and who to refer for
7 mental health services?

8 A. I don't know what specific training they had in
9 that particular area. I know they'd received mental health
10 training in the not too--in the relative time frame of this
11 incident, but I do not know the specifics of whether your
12 question was addressed or not.

13 Q. Okay. And how would a reasonable, well-trained
14 officer make that decision?

15 A. Much of it's going to be common sense. How--how
16 profound are the--how profound are the symptoms that the
17 officer can observe--

18 Q. Well--

19 A. --how obvious.

20 Q. --in some respect, isn't that a medical decision,
21 whether or not this guy needs help?

22 A. In the same sense that in--in some respect a
23 doctor's going to decide we'll leave a bullet in the body or
24 not, sure. Some--some wounds, some injuries--physical
25 injuries are going to be more obvious, just like some mental

1 health crises are going to be more obvious.

2 Q. And don't police officer--officers have to have
3 some kind of training to help them make that decision?

4 A. Well, the core foundation, we hope they have some
5 common sense and observation skills, but training is certainly
6 going to assist them in making that decision.

7 Q. Okay. And as you reviewed the Gallatin Police
8 Department reports, historical reports, you noted cases in
9 which the subject was not arrested but was transported for
10 mental health evaluation and treatment?

11 A. I--I can remember a few cases.

12 Q. What reports did you review to find that
13 information?

14 A. I was given a span of reports, including annual
15 reports, but let me see if I--I'm not sure that I--I think the
16 span was 2007 to 2011. I was given incident reports that
17 involved calls for service where there had been use of force
18 reports completed. And I--

19 Q. So--

20 A. My belief is, it covered that entire span of 2007
21 through 2011.

22 Q. Okay. So would--so you're talking about use of
23 force reports that you got that information out of?

24 A. Incident reports where there was a use of force
25 reported.

1 Q. Did you review anything to try to determine what
2 the general orders require in Gallatin in terms of a police
3 officer taking somebody for mental health treatment?

4 A. No.

5 Q. Did these officers get adequate instruction on
6 dealing with somebody with excited delirium?

7 A. I believe so. The training they had on excited
8 delirium that was included in their Taser training materials
9 is pretty much the foundation that officers across the country
10 get.

11 Q. Okay. And that's two and three slides in Version
12 14.0?

13 A. In Version 14.0, I don't remember how many
14 slides, but there are a couple of videos and there are--is a
15 discussion--was--I guess was would be the best way to put it--
16 a discussion Version 14.0 of the major indicators or symptoms
17 or signs of excited delirium that you've asked me about and
18 we've discussed earlier today. And then officers are also
19 taught--were taught then and it's still part of that training
20 curriculum now, the core elements of response to excited
21 delirium.

22 Q. Okay. So it's your opinion that the training
23 contained in Version 14.0 on excited delirium is adequate
24 training for a police officer in regards to dealing with
25 somebody exhibiting the signs of excited delirium?

1 A. That training has certainly improved over time
2 and there's more of a discussion now in current training
3 materials, but at the time that these officers were trained,
4 they were trained with the materials that were commonly in use
5 throughout the country.

6 Q. In regards to dealing somebody--dealing with
7 somebody that has mental health issues, did these officers
8 receive adequate training?

9 A. I believe they received more training than many
10 police officers do. I don't have with me the training
11 records, but I believe all of the officers involved in this
12 particular incident actually had been to some specialized
13 in-service training dealing with mental health incidents
14 within a relatively short time prior to this particular--
15 particular incident. That is, unfortunately or fortunately,
16 however you look at it, not universally true of law
17 enforcement agencies across the country.

18 Q. Do you know if any of the officers involved in
19 this case took a test--written test in regard to that
20 in-service training, whether or not they passed it?

21 A. I don't recall seeing a test.

22 Q. Okay. Did the Tennessee POST standards require a
23 test to be given after in-service training?

24 A. I don't recall.

25 Q. Have you reviewed the Tennessee POST standards?

1 A. I have seen the Tennessee POST standards, yes.

2 Q. Have you reviewed them?

3 A. Well, I didn't look at them in detail for this
4 particular case. I have--I have previously looked at
5 Tennessee POST materials for other purposes.

6 Q. Are you familiar with the Tennessee POST
7 standards?

8 A. I'm not familiar with what changes they may have
9 had in the last few years.

10 Q. Is that something that would be important for you
11 to be familiar with in expressing opinions in this case?

12 A. Not necessarily, particularly if it's an area
13 where the department is providing training that may well
14 exceed that training that is typically offered nationally.

15 Q. Number 6: "As the investigation progressed and
16 officers learned that Woodward was falsely claiming that his
17 mother had been kidnapped"--

18 A. Are you--what page are you on?

19 Q. Eight.

20 A. I see where you're at.

21 Q. Second sentence. ". . . and officers learned
22 that Woodward was falsely claiming that his mother had been
23 kidnapped, the officers should have been increasingly
24 concerned that Woodward had, at least initially, a large knife
25 and the inherent threat to public safety posed by Woodward's

1 behavior."

2 At this point, shouldn't they have also been
3 increasingly concerned about his mental state?

4 A. They certainly should have been increasingly
5 concerned about what he might have intended to do with the
6 knife. Keeping Woodward, his mother, the public, and the
7 officers safe should have been the primary focus at this
8 particular point. But I would agree with--with you that they
9 should also be thinking about what his mental state is at this
10 point.

11 Q. And part of--isn't part of keeping him safe
12 calling for medical assistance at this point, knowing what
13 they know?

14 A. No.

15 Q. Why not?

16 A. At this point, nobody's seeing any signs that
17 he's in a medical crisis. We--at this point, it is likely
18 that he's going to end up in the detention facility, where
19 he'll be assessed for his medical and mental health needs, but
20 he's not demonstrating signs of a need for acute intervention
21 at this point.

22 Q. Now, you've told me that a couple of times, but I
23 can't get you to define medical crisis for me.

24 A. And I can't. I can--I can tell you what it--if
25 you give me a situation, I can tell you whether I would deem

1 it a medical crisis or not. But there's such a wide array of
2 what may be a medical crisis for one person isn't a medical
3 crisis for another.

4 Q. Okay. Well, how does a police officer make that
5 decision?

6 A. Largely based on the officer's common sense with
7 whatever symptoms or signs are evident to the officer.

8 Q. Is common sense more important than his training?

9 A. It could be. It could be.

10 Q. Let's go to page 10. Number 3 says, "Police
11 officers are trained to take personal responsibility for their
12 safety and to take steps to detect contraband that might be
13 stashed in a police car during transport"

14 Isn't that something Ford should have done before
15 ever putting him in the police car?

16 A. It certainly would have been reasonable for Ford
17 to do that.

18 Q. I'm trying to skip some of this or we'll be here
19 all day.

20 A. Other than the irritating noise of the airplane,
21 I don't mind. And I don't want you to miss Las Vegas.

22 Q. Let's go to page 13. Paragraph 7. "Plaintiff's
23 expert's claim [sic] that the Taser X26 delivers 50,000 volts
24 to the subject's body are false." How many volts does it
25 deliver?

1 A. It depends, but typically, you're only looking at
2 1,200 volts. The fifty--the 50,000-volt number is a--it's a
3 media myth, if you will.

4 Q. Is it a media myth or is that myth put out there
5 by Taser International?

6 MR. McMILLAN: Objection. I mean, you can answer
7 if you know, but he's not here to testify to what Taser
8 International does.

9 THE WITNESS: I--I think it would be fair to say
10 that there have been people who have used that number not
11 cautiously that might be--might have been or may still be
12 associated with Taser International, but I don't know that
13 they were--I don't know that they were speaking for the--I
14 don't know, sir.

15 BY MR. BEDNARZ:

16 Q. Didn't the early--

17 A. But I get where you're coming from, okay? I see
18 it.

19 Q. Didn't the early promotional material that they
20 put out throw the 50,000 volt number out there for everybody
21 to see?

22 A. I've seen some material, I'm sure, that folks at
23 Taser are uncomfortable with today.

24 Q. Have you been to that place in the desert,
25 Scottsdale?

1 A. Yeah, I've never--I've never taken the tour.
2 I've been to the outside of the building.

3 Q. Oh, you haven't been in it?

4 A. No.

5 Q. Haven't had their scanners--

6 A. I've heard.

7 Q. You go into this room--

8 A. Have you been there? Have you gone to the class
9 there?

10 Q. No, I took depositions there. You go in the
11 front door, and you go in this round room and no windows. And
12 there's a monitor and a retinal scanner. And--

13 A. So much of that is show. I've heard that, sir,
14 but I don't--yeah, I've never--never been invited.

15 Q. And it's all for show.

16 It looks to me like you don't think much of the
17 Canadian studies?

18 A. There are some very fine products put out by
19 folks at the Ontario Police College and other--other Canadian
20 research facilities, but there are some--I'll just leave it at
21 that.

22 Q. How about the Braidwood Commission?

23 A. I'm not prepared to opine here today about the
24 deficiencies of the Braidwood Commission's report.

25 Q. Paragraph 8, you say, "Officers are taught that

1 there have been well over 2,860,000 Taser applications on
2 humans." Where do you get that information?

3 A. That's a number that I include--and that's the
4 number in my current training material that I present. And
5 that is a number--and I believe that number is actually--
6 what's the date of this?--I believe that number has actually
7 increased. But at the time . . .

8 MR. McMILLAN: I'm sure it's increased since we
9 started this deposition.

10 THE WITNESS: At the time, that number was put
11 out by--oh, this is July--yeah. I haven't updated my training
12 material since July 24th, but that number is available from
13 Taser International.

14 BY MR. BEDNARZ:

15 Q. What does that number include?

16 A. That includes field deployments, military and
17 civilian testing deployments, training deployments, as well as
18 Taser's own research deployments.

19 Q. Do you know how many of those are the full
20 five-second application?

21 A. I believe that the majority, but I do not know
22 whether that's--it's accurate to say that they're all a full
23 five-second.

24 Q. Do you know that a very high percentage of them
25 was 0.5 seconds?

1 A. No, I'm aware that during some of the research
2 trials, there were abbreviated deployments, but I don't
3 believe that it would be accurate to say that the vast
4 majority were.

5 Q. The last sentence: "However, officers are also
6 taught that there has never been a death that has been
7 scientifically or medically demonstrated to have been caused
8 by the application of the Taser device." That one you're
9 going to have to explain for me.

10 A. That's part of the training material. It's part
11 of the training material Taser puts out. It's consistent with
12 the medical research with which I am familiar, the medical
13 research that is commonly cited, the findings of medical
14 researchers that I've heard report at places--for, example,
15 the conference you mentioned you attended, the IPICD
16 conference. There have been persons who have had a Taser
17 applied or deployed who subsequently died, that in no case has
18 there been conclusive scientific or medical evidence that the
19 Taser device caused, was the cause of that person's death.

20 Q. And that's what I don't understand. How can you
21 possibly say that--how--what would you have to do to
22 scientifically demonstrate or medically demonstrate that a
23 death had been caused by the Taser?

24 A. You have to have an autopsy performed by a
25 medical examiner or someone who was scientifically or

1 medically qualified to reach that conclusion.

2 Q. And if the medical examiner concluded that
3 somebody had ventricular fibrillation and died as a result of
4 the Taser application, would that be enough?

5 A. I'm not--I'm not sure that that would be enough.
6 I could tell you that I'm not aware that there have been any
7 medical findings that have withstood review that have reached
8 that conclusion. That's what I've been taught and that's my
9 belief.

10 Q. You know there's some juries out there that have
11 reached that conclusion, don't you?

12 A. I'm aware that there are some court cases where
13 nonmedical findings have disagreed with some of what I've
14 written here with respect to that.

15 Q. You know medical examiners have made that
16 finding?

17 A. I know that there have been--there has been at
18 least one autopsy challenged where that finding was at least a
19 preliminary finding.

20 Q. Are you talking about the three that Taser filed
21 a lawsuit over in Ohio?

22 A. Yes, sir.

23 Q. What about in the Cardall case? What did the
24 medical examiner find there? Do you know?

25 A. I have seen the medical examiner's report and the

1 expert--the medical experts' reports in that case, but as I
2 sit here today, I'm not prepared to tell you what I recall
3 from that.

4 Q. Medical examiner's cause of death was ventricular
5 fibrillation as a result of the Taser application, wasn't it?

6 A. I don't--as I sit here today, I don't recall. I
7 remember some of the issues with respect to the medical
8 examiner, but I don't recall the specific findings of the
9 medical examiner.

10 Q. Is the case still ongoing?

11 A. It is.

12 Q. Allegations that in that case the officers didn't
13 have any mental health training or adequate mental health
14 training?

15 A. I don't recall what the complaint consists of in
16 that case.

17 Q. How much are you involved today in training
18 officers to use Tasers?

19 A. I continue to instruct Taser courses, and I
20 continue to--you know, for example, next week, I'll be
21 instructing at the Utah Sheriffs Conference on Taser risk
22 management issues, and then instructing for a police
23 department here. I do it on a regular basis. I do not--I'm
24 not sure if I understood your question. I don't do it on
25 behalf of Taser and I don't work for Taser, if that's what you

1 were--what you're asking.

2 Q. No, I was not.

3 A. Okay.

4 Q. How involved are you nowadays in terms of
5 developing policies for police officers and police departments
6 in regard to the use of Tasers?

7 A. I am very involved in developing, maintaining,
8 updating, and making sure that policies are consistent with
9 current best practices in the realm of electronic control
10 devices through my work with Lexipol. However, it would be
11 important to note that Lexipol does not promulgate a Taser
12 policy per se. Lexipol promulgates a policy that addresses
13 electronic control devices. It just so happens that Taser is
14 the leading provider of electronic control devices, I think in
15 the world, but certainly in the United States.

16 Q. Would you agree that if you're going to teach
17 officers about Tasers, you have an obligation to teach them
18 about the dangers associated with using a Taser?

19 A. I think that if there are known dangers that
20 officers should be taught about those--taught what those risks
21 are.

22 Q. And if there's scientific evidence and medical
23 examiners medically demonstrating that people are dying, isn't
24 it irresponsible to teach them that a death has never been
25 scientifically or medically demonstrated to have been caused

1 by the application of a Taser?

2 A. I think officers should be presented with the
3 best and most competent science where there are conclusive
4 findings available.

5 Q. Okay. And you cite Dr. Bozeman's report in here
6 where they--it's 1,200 some-odd cases they looked at?

7 A. It's--if you say 1,200, that sounds--that
8 sounds--I think so. I don't remember. I probably--

9 Q. 1,201.

10 A. What page are you on?

11 Q. I'm looking at the article.

12 A. Oh, yeah. I don't--I thought--if you say 1,201,
13 that--I certainly don't disagree with you here today.

14 Q. Do you know that even in this study, two people
15 died after being Tased?

16 A. I'm aware that a person--again, if you--I haven't
17 read the Bozeman study in a while. If you say two, I have no
18 reason, as I sit here, to disagree with you.

19 Q. Are you familiar with the recent article by Dr.
20 Zipes in the Journal of the American Heart Association?

21 A. Familiar with in the sense that I have the
22 download on my home computer, but not had--only read the
23 caption. Haven't read--or not the caption; the abstract.

24 Q. Dr. Zipes says that Tasers can cause death,
25 correct?

1 A. I have no reason to disagree with you that that's
2 what the article says.

3 Q. Wouldn't it make sense to start teaching these
4 police officers that this is a good tool to use, but it's
5 dangerous and you can kill somebody and not--don't use it as a
6 substitute for putting your hands on them?

7 A. I don't agree with that broad statement.

8 MR. BEDNARZ: I've got to take a short break
9 again.

10 (Recess taken, 11:51-11:52 a.m.)

11 BY MR. BEDNARZ:

12 Q. You used the term, "a reasonable and well-trained
13 officer," frequently in your report. And that's what we're
14 talking about here, right, what a reasonable and well-trained
15 officer ought to do?

16 A. Yes.

17 Q. Shouldn't a reasonable and well-trained officer
18 request paramedics or some kind of unit to respond as soon as
19 they know they're dealing with somebody under the influence of
20 drugs and exhibiting delusional behavior?

21 A. No.

22 Q. Why not?

23 A. There are many people--police officers deal very,
24 very frequently with people under the influence of drugs. I
25 mean, I don't know that this is the foremost reason, but one

1 practical reason is we simply don't have the emergency medical
2 resources in--in this country and certainly not in any city
3 I'm familiar with, to respond to every situation where police
4 officers deal with a person under the influence of drugs. And
5 I'm going to include alcohol in that category because
6 certainly people die from alcohol poisoning as well.

7 But the fact of the matter is, a lot of people
8 that are exhibiting signs of a mental health situation and are
9 under the influence of drugs don't need emergency medical
10 treatment. They don't need paramedics. Their situation can
11 be addressed adequately by taking them to a detention center.
12 For example, at 2:00 in the morning last night when I got
13 home, one of the--one of the best places in the valley,
14 outside of a hospital emergency room, to get emergency medical
15 treatment would have been at the receiving center of the Salt
16 Lake County Jail where they've got trauma nurses sitting
17 physically there. They're prepared, trained, equipped, and
18 highly experienced in addressing people in mental health
19 crises who are under the influence of drugs.

20 Q. Now, PERF, the Police Executive Research Forum,
21 what is that?

22 A. It's pretty much exactly what it sounds like.
23 PERF is an organization that promulgates--first off, they
24 sponsor research. Secondly, they bring together subject
25 matter experts to examine research in what you might call a

1 literature review and to discuss best practices for police in
2 a variety of areas.

3 Q. And do you know what--well, scratch that.

4 Are you familiar with PERF guidelines for using
5 conducted energy devices?

6 A. I am--I have reviewed them and am familiar with
7 the fact that their guidelines were, how should we say,
8 modified, adjusted, re--revised is the best word--last year.

9 Q. In what way were they revised?

10 A. I couldn't tell you. There was a fairly lengthy
11 list and report and I worked with some other folks in dividing
12 up that report and looking at particular segments and as I sit
13 here today, I don't--I can't honestly recall which segments
14 and which parts I was detailed to look at.

15 Q. Do you have any criticisms of the guidelines put
16 out by PERF?

17 A. I have previously participated in discussions
18 where I was critical. I'm not--it's not anything I reviewed
19 in the recent past and it's not the sort of thing I would be
20 able to tell you here today with respect to specific
21 criticisms.

22 Q. Okay. How about the model policies from the
23 International Association of Chiefs of Police in regard to
24 Tasers or ECDs?

25 A. Which are fairly--you see some of the same people

1 involved in that group as you see in PERF. And again, in the
2 course of working on ECD policies for other agencies, I have
3 looked at the IACP policies. I'd be happy to address
4 particular elements of those policies, but I can't tell you,
5 off the top of my head, what I might or might not disagree or
6 agree with.

7 Q. CEDs should only be used against persons who are
8 actively resisting or exhibiting active aggression. Do you
9 agree with that?

10 A. As a general proposition, yes. One of the
11 difficulties there is today as we speak, even last week I've
12 been involved in a couple of discussions about trying to
13 define what is active resistance. And that, in fact, is one
14 of the criticisms that some people have raised about some of
15 the PERF writing is they've used terms that to--to some of
16 their folks may have universal application, but may not
17 necessarily have universal application in a broader audience.

18 Q. Training protocols should emphasize that multiple
19 activations and continued cycling of a CED appeared to
20 increase the risk of death or serious injury and should be
21 avoided where practical. Do you agree with that?

22 A. I agree that multiple applications and cross-
23 applications and multiple cycling are--have been shown to
24 require further study. And in fact, there is some indication
25 that multiple applications, cross-applications and multiple

1 cycling do, in fact, increase risk to the person against whom
2 the device is being deployed. And I believe that that--I have
3 personally incorporated that into policies I've written. I've
4 also personally incorporated that into training materials that
5 I use and that is, in fact, something I'll be discussing next
6 week as I present a couple of times on ECD use.

7 Q. Problems with this computer.

8 A. Yeah, well, if it were me, I'd have problems with
9 any computer, so . . .

10 Q. Okay. Back to IACP, would you agree that the
11 ECW's generally analogous to pepper spray on a force
12 continuum?

13 A. I would agree that there are circumstances where
14 deployment of pepper spray or similar chemical weapons would
15 be analogous to circumstances where it would be appropriate to
16 deploy a conducted energy weapon.

17 Q. Do you agree they ought to be used pretty much in
18 the similar--in similar circumstance?

19 A. I do not.

20 Q. Do you think a Taser should be used in cases
21 where pepper spray would not be appropriate?

22 A. There may be cases where pepper spray is
23 appropriate and a Taser is not. There may be cases where a
24 Taser is appropriate and pepper spray is not.

25 Q. The general orders of the Gallatin Police

1 Department, do you know where they put those two in the force
2 continuum?

3 A. I--I have read that, but I don't remember where
4 they're at.

5 Q. It says it is forbidden to use the device, ECW,
6 as follows: on a handcuffed or secured prisoner, absent
7 overtly assaultive behavior that cannot be reasonably dealt
8 with in any other less intrusive fashion. Do you agree with
9 that statement?

10 A. I believe that's written a little more
11 restrictive than--restrictively than I would write the policy,
12 but I generally agree with that proposition--that proposition.

13 Q. This device may also be used in certain
14 circumstances in a touch stun mode. This involves removing
15 the cartridge and pressing the unit against an appropriate
16 area of the body based on training. It is important to note
17 that when the device is used in this manner, it is primarily a
18 pain compliance tool due to the lack of probe spread. Do you
19 agree with that?

20 A. That's an accurate statement.

21 Q. That it's minimally effective compared to
22 conventional cartridge-type deployments. Do you agree with
23 that?

24 A. I agree with that in the context that cartridge-
25 type deployments refer to probe deployment.

1 Q. And that the touch stun mode should be subject to
2 the same deployment guidelines and restrictions as those in
3 the ECW and cartridge deployments. Do you agree with that?

4 A. As a general proposition, yes.

5 Q. Are you familiar with the IACP's electronic
6 control weapons concepts and issue papers?

7 A. I have read it.

8 Q. And it was designed to accompany the model
9 policy?

10 A. I think it was part and parcel, but I agree that
11 it's associated with their--with their model policy.

12 Q. Would you agree the comprehensive research on the
13 uses of ECWs and their potential role in injury or death is
14 not yet available?

15 A. I would not. There is a substantial body of
16 research that has been completed and my--my impression is that
17 there's probably not a tool in the arsenal of law enforcement
18 that has been more studied, including firearms, than
19 electronic control devices.

20 Now, are there improvements to be made in
21 research and ongoing research? Certainly.

22 Q. Do you agree that use of the ECW as a contact
23 weapon operates as a device rather than an electromuscular
24 disrupter and as such, may not be effective on persons who,
25 because of drug or alcohol use, or mental illness, do not

1 sense pain as readily as others?

2 A. I think that's an accurate statement.

3 Q. Do you agree that officers must consider the
4 totality of the circumstances in every use of force situation
5 to ensure that the best overall decision is made?

6 A. I agree that the officers should consider the
7 totality of the circumstances that they can perceive and
8 information available to them.

9 Q. And that they should be aware of the following
10 concerns: Is there a need to immediately incapacitate the
11 subject? Does the subject appear mentally deranged, under
12 severe influence of drugs or alcohol or in a highly agitated
13 and uncontrolled state?

14 A. I think those are factors an officer should
15 consider.

16 Q. If an ECW is not held vertical to the ground,
17 turn it sideways, are you as accurate when you shoot it?

18 A. As a general proposition, no. And I--I think--
19 I'm answering your question with respect to a Taser. There
20 are other ECWs out there, some of which I have seen
21 demonstrated and some of which I've used in training. Some of
22 which I'm not familiar with and I've only seen pictures of and
23 videos and read--read material on--literature on.

24 Q. Do you teach officers to keep the gun--forget
25 what I said--

1 A. Vertical.

2 Q. --vertical to the ground?

3 A. If, by vertical to the ground, you're referring
4 to the grip being parallel to the officer's body straight up
5 and down, the officer's standing, then yes. I think that's
6 what you meant by vertical.

7 Q. And because of that--that's because the probe
8 spread--one of the probes comes out at an angle, is that the
9 main purpose of that?

10 A. Yes. The probes are designed to be fired on
11 angles.

12 Q. Okay. Do you agree that limiting the number of
13 injuries--limiting the number of energy cycles, the use of
14 continuous cycling of more than 15 seconds, and instances of
15 multiple officer deployments against the same person can help
16 prevent tetany, which is muscular spasms, or exhaustion of
17 muscles of respiration and the development of acidosis?

18 A. I have read research that indicates that. I
19 don't--I don't know that that's a sound medical conclusion,
20 but I have read material that lead me to believe that.

21 Q. Okay. And you know that's a recommendation by
22 the International--

23 A. IACP, yes.

24 Q. --Association . . .

25 Do you agree that police may be misled by the

1 fact that the subject can still speak, indicating the clean--a
2 clear airway, which does not necessarily mean they can breathe
3 at an adequate rate?

4 A. I do.

5 Q. Persons experiencing severe cocaine,
6 methamphetamine, or other forms of serious drug or alcohol
7 intoxication are among those at highest risk of sudden death.
8 Do you agree with that?

9 A. Yes. When you say among, that not being an
10 exhaustive list, yes, I agree with that.

11 Q. And it goes on to say it is not difficult to
12 postulate that the use of an ECW on such individuals, who are
13 often already in a precarious physical state, could
14 precipitate unexpected negative--negative consequences,
15 including death?

16 A. And I don't know that the medical science
17 necessarily is consistent and harmonious on that point, but I
18 am aware of researchers that have made that assertion.

19 Q. And this is the IACP who's saying this?

20 A. Well, it--it--it's a--I think that you're
21 actually reading--I don't know where you're reading from, but
22 I think that's discussed in the issues paper. And the issues
23 paper is based on medical research as well as practitioner
24 opinions interpreting that medical research. I simply don't
25 know that that's--that that's been determined to a reasonable

1 degree of scientific certainty.

2 Q. This is information--

3 A. But I know that it says that, if that's what
4 you're asking. I've read that.

5 Q. It's information put out by IACP and provided to
6 police departments across the country?

7 A. It's available, yes.

8 Q. Failure to provide professional accepted training
9 exposes the officer, the agency, and the public to an
10 increased potential for negative outcomes. Do you agree with
11 that?

12 A. Yes.

13 Q. It is important to note that some ECWs project a
14 visible red laser dot on the target and that the cartridge can
15 be quickly removed from the device and a visible electric arc
16 displayed in an effort to coerce suspect compliance. Use of
17 these types of preemptive measures have been the subject of
18 much debate. In a number of cases, these actions have
19 convinced suspects that they should submit to officer
20 directions rather than resist. However, in other cases,
21 suspects immediately attacked officers or turned and ran away,
22 requiring a foot pursuit and physical confrontation after
23 being overtaken. Considering the totality of the
24 circumstances, it is generally better to use the device as
25 soon as practical after justification is established.

1 Do you agree with that?

2 A. I agree that--what you read says that it has been
3 the subject of much debate. I would agree with that, but I
4 would say that it continues to be the subject of very active
5 and vigorous debate in the law enforcement community.

6 Q. And it acknowledges the fact that some of these
7 people, when they see this red light on them, they're going to
8 take off and run?

9 A. Yes.

10 Q. So if you're going--you don't want to keep
11 warning them over and over and over again, you're going to do
12 this; is that correct?

13 A. That's where the--that's one of the key points of
14 this discussion, this ongoing discussion.

15 Q. And then it lists situations where the suspect
16 needs medical attention. I'm not going to go through those.

17 I'm going to go real quickly through the model
18 policy for K9s. Are you familiar with that one?

19 A. I am. And when you say real quickly, how quickly
20 do you mean?

21 Q. Pretty quickly.

22 A. Okay.

23 Q. Need a break?

24 A. I'm getting close--close to the end of my water
25 tolerance.

1 Q. We can take a break.

2 A. If you don't mind.

3 (Recess taken, 12:14-12:21 p.m.)

4 BY MR. BEDNARZ:

5 Q. All right. I want to go to page 27 of your
6 report.

7 A. Thanks for that break.

8 Q. I'm trying to get through this so we can--I
9 didn't mean to take this long, but--"The system of review,"
10 No. 3--

11 A. Okay.

12 Q. --"for police use of force is enhanced by
13 separate early warning system designed to identify potential
14 concerns through a pattern of citizen complaints."

15 Tell me about the system of review they've got.
16 Are you familiar with it?

17 A. They use a commercially available software
18 program. I've seen advertisements. I'm not familiar with
19 this particular software program, but I am generally familiar
20 with how they work.

21 Q. Do you know the name of it?

22 A. I saw it, but I don't remember what it is.

23 Q. Based solely upon citizen complaints?

24 A. No. It--one of the other things that is examined
25 is the overall ratio of uses of force to arrests, and then if

1 there are individual officers who--I don't want to say score,
2 but have a higher number that is markedly inconsistent with
3 other officers' uses of force per arrest. Excuse me, not per
4 arrest, but per numbers of arrest in a particular reporting
5 period.

6 Q. And then you go on to talk about CALEA standards?

7 A. Yes, sir.

8 Q. And that requires the completion of a written
9 report whenever an officer uses a force tool or applies
10 weaponless physical force. Gallatin belongs to CALEA?

11 A. Yeah. I'm not sure the right term is it belongs
12 to, but they have paid the fee and have had accreditors from
13 CALEA come in and review their agency and they achieved their
14 accreditation. I don't remember when it was before this case.

15 Q. And to maintain that accreditation, they've got
16 to meet the standards?

17 A. Yes. I don't--there's a periodic review. I
18 don't remember what the period is. It's yearly, thereabouts.

19 Q. You talk about, "Nationally, among persons who
20 have had contact with police, an average of 1.5 percent had
21 force used or threatened against them" When you say
22 persons who had contact with police, what does that mean?

23 A. Persons who are in a situation where there is a
24 call for service or where police are proactively responding to
25 a situation, the--that statistic actually comes from OJP, the

1 Office of Justice Program. And I can't recite for you their
2 definition here, but grossly, it's defined as persons who are
3 involved in a call for service or an on-view police
4 intervention. It would not refer to, for example, you calling
5 the police asking what the helmet laws for motorcycles in the
6 state of Utah are. And incidentally, we don't have any helmet
7 laws.

8 Q. Does it strike you as odd that there's never
9 been--the City of Gallatin has never found that a police
10 officer used excessive force?

11 A. I'm not sure that that's accurate, but it would
12 strike me as notable if that were the fact.

13 Q. That would be highly unusual for a force that
14 size, wouldn't it?

15 A. It might be. My agency over which I am the chief
16 is approximately the same size. My agency has actually even a
17 lower force ratio, according to NIJ--excuse me--the National
18 Institute of Justice standards.

19 Q. Which agency are you talking about?

20 A. The Utah attorney general investigation division,
21 the state-wide investigative agency in this state.

22 Q. That would be a substantially different type of
23 law enforcement, wouldn't it?

24 A. It would. And that's my point. I would expect
25 to see a different ratio, for example, in--I was just down in

1 Los Angeles last week, and the officers that I was riding with
2 down there, I think, would have a much different ratio than,
3 for example, my daughter's on her way to Sandpoint, Idaho. It
4 just depends on a number of factors, sir.

5 Q. And you say Gallatin's substantially lower. But
6 to compare Gallatin to the other departments would require
7 them to report the uses of force in the exact same manner,
8 correct?

9 A. It would. And the--the Gallatin reports--this
10 is--this ratio here is based on something called NIBRS,
11 N-I-B-R-S. And I don't remember exactly what that stands for,
12 but it's the department of justice's reporting system. But at
13 the end of the day, Mr. Bednarz, I would have to say that
14 there's still discretion in how Gallatin reports, how my
15 agency reports, how LAPD reports and how NYPD reports.

16 Q. For instance, would you agree that every trigger
17 pull of a Taser is a separate use of force?

18 A. If--other than training and other than testing,
19 yes.

20 Q. Do you know, when they keep these statistics,
21 whether Gallatin would report four trigger pulls as one use of
22 force or four uses of force?

23 A. If I saw that, I don't recall it.

24 Q. Do you know if they do it the same way as, for
25 instance, Nashville does?

1 A. I do not.

2 Q. And that could have a significant effect on these
3 final numbers when you start trying to make comparisons like
4 that, wouldn't it?

5 A. You bet. Any--any discretionary exercise or even
6 any nondiscretionary, inconsistent exercise of discretion in
7 reporting could impact these numbers.

8 Q. And if there was a higher rate of officers in a
9 particular department using force and not reporting that
10 force, that could have a significant effect on the numbers,
11 couldn't it?

12 A. Oh, yes. Yeah.

13 Q. We might have suspects who are politer in
14 Tennessee, so it doesn't require the use of force?

15 MR. McMILLAN: Objection.

16 THE WITNESS: Having--having worked in the great
17 state of Texas and having lived in the South in the early part
18 of my days, I will say that that certainly is within the realm
19 of possibility. And on those rare occasions that I've been to
20 Tennessee, I have found that Southern hospitality is not a
21 myth.

22 MR. BEDNARZ: And off the record.

23 (A discussion was held off the record.)

24 BY MR. BEDNARZ:

25 Q. I want to show you this video for just a minute.

1 A. Would you like me to come over there--

2 Q. Yeah.

3 A. --or just turn around? What do you want to do?

4 Q. Might see it better if I turn it away from the
5 window.

6 A. Do you want to sit here, sir, and I'll--

7 Q. It doesn't matter. I'll just put it over here so
8 everybody can see it.

9 MR. McMILLAN: Can you see it okay with the
10 lights on? Do you want to dim it a little bit?

11 THE WITNESS: I can see the screen just fine. I
12 just didn't want to look over your shoulder because . . .

13 MR. McMILLAN: Maybe I can do half of them. Do
14 you know which part of the video you want to play?

15 MR. BEDNARZ: Yeah, this is it, I think.

16 Start over.

17 Well, this program, I can't . . .

18 Okay. I'll go to 1647.

19 Okay.

20 THE WITNESS: Should I look now?

21 BY MR. BEDNARZ:

22 Q. Okay. If you'll look over here in just a minute,
23 do you see him go down?

24 A. Yes, sir.

25 MR. McMILLAN: For the record, whose video camera

1 is this?

2 MR. BEDNARZ: This is the Hill video. We're at
3 1647.

4 MR. McMILLAN: Okay.

5 BY MR. BEDNARZ:

6 Q. I want you to count from the time he falls until
7 the time he--

8 A. Did you put it back?

9 Q. Yeah. Could you tell whether or not that
10 five-second cycle ran? Did it appear he was partially
11 incapacitated for five seconds?

12 A. To me, it does not.

13 Q. Okay.

14 A. Do you have--is there a time counter on there,
15 sir?

16 Q. Yeah.

17 A. Can I look at that or would that be . . .

18 Q. Okay. We're about 15 seconds before that, but
19 there's a time counter down here. I guess if you'll tell me
20 when you think--you tell me what you think.

21 A. I--and I was paying attention to him, so I didn't
22 really look at the time there, but.

23 Q. Could you tell if he was on the ground for five
24 seconds?

25 A. It--it seemed to me, just looking at it, that it

1 was close to five seconds.

2 Q. Right there, do you see the Taser wires still
3 hanging on him?

4 A. I see one wire, yes, sir.

5 Q. And he's on the car. Well, it's not working like
6 I wanted it to, so we'll move on.

7 A. A better copy--better screen--

8 Q. It worked, it's much easier to--

9 A. Sure.

10 Q. Do you know Chief Burke at Salt Lake City? Is he
11 still a chief or is that wrong?

12 A. That's--that's not correct.

13 Q. Do you know a Chief Burke?

14 A. I--I don't. Their second tier of command there
15 is also called Burke, but I don't believe there's anyone there
16 by that name.

17 Burke in Phoenix.

18 Q. I think I'm probably through, but why don't we
19 take about a three-minute break so you guys don't have to sit
20 here while I go through this stuff.

21 A. Okay.

22 (Recess taken, 12:38-12:43 p.m.)

23 BY MR. BEDNARZ:

24 Q. I bet you wish I said I didn't have any more
25 questions.

1 A. I don't care. I don't have many.

2 Q. Do you know Michael Brave?

3 A. Yes.

4 Q. And how do you know Mr. Brave?

5 A. I know him both--well, we--we see each other and
6 communicate with each other on a fairly regular basis.

7 Q. Is it through the--

8 A. We have sat together on committees. We have
9 co-presented. He has attended presentations that I have done.
10 I have attended presentations that he has done.

11 Q. Institute for the Prevention of In-Custody
12 Deaths--trying to get that out--but through that organization,
13 do you know him?

14 A. That is one of the venues at which he has
15 attended something I have presented. And I believe I've heard
16 him present there, but I'm not certain.

17 Q. Okay. Do you know him through the department of
18 justice?

19 A. We did not serve together on a department of
20 justice committee.

21 Q. How long have you known Mr. Brave?

22 A. Oh, gosh, 12 to 15 years.

23 Q. Okay.

24 A. I've personally known, 12 to 15 years. No, even
25 before that.

1 Q. Okay. How did you meet him?

2 A. When I was a bureau chief at the Utah Department
3 of Public Safety, one of the projects that I oversaw was a
4 revamping of our police academy curriculum. And we added to
5 the curriculum a couple of courses that I personally directed
6 the curriculum development. And in one of those courses, I--I
7 talked to a number of subject matter experts and asked to sit
8 down with them and discuss. I--I'm a little fuzzy, but I
9 believe that was my first exposure to personally dealing with
10 Mike Brave.

11 Q. Have you taken any advanced training courses from
12 Taser, the Armorer course or any of that advanced-type stuff?

13 A. I have taken the instructor recertification
14 course and I'm currently--well, no, not from Taser.

15 Q. Then I've got ask from who, since you started to
16 go there.

17 A. Yeah. I figured you would. IPICD, the Institute
18 for Prevention of In-Custody Death, presents a course that I
19 think it's like a co-share, like a sanctioned course by Taser,
20 but it's not at Taser's facility.

21 Q. Okay. And what is the name of that course?

22 A. It's the forensic ECD course.

23 Q. Now, throughout your report, you make mentions of
24 Mr. Woodward trying to escape. When you used the term escape,
25 do you really believe he was trying to escape from the police

1 officers?

2 A. Get away from the police officers.

3 Q. You don't believe he could have gone anywhere, do
4 you?

5 A. Boy, I--I don't know that.

6 Q. Is it typical for somebody to be trying to get
7 away from the causes of pain rather than from the police
8 officers themselves?

9 MR. McMILLAN: Object.

10 THE WITNESS: It depends on the personal
11 circumstances.

12 BY MR. BEDNARZ:

13 Q. Have you reviewed anything that's not listed on
14 your report?

15 A. If you want to refine that question, have I
16 reviewed anything that I've relied on in my report that's
17 specifically for writing this report or testifying here today,
18 the answer is no.

19 Q. Have you reviewed anything related to this case
20 that's not listed in your report?

21 A. Well, I mean, I've read research studies that you
22 haven't cited here today that generally deal with electronic
23 control devices. I've read other books, but not in the
24 context of preparing for this case, and certainly not in the
25 context of preparing for here today.

1 Q. For instance, you've got a number of depositions
2 listed on this report. Have you read all of those
3 depositions?

4 A. If I've got them listed here--and I think there
5 were like eight, nine--well, let me just look at names, okay?

6 Q. Okay.

7 A. I have read all of those depositions. If there
8 are others, I either haven't read them or I don't know that
9 they exist.

10 Q. Have you been provided with summaries of those
11 depositions?

12 A. No.

13 Q. Have you made summaries of those depositions?

14 A. No.

15 Q. Have you taken any notes?

16 A. No.

17 Well, let me--let me tell you how I do my report,
18 and that might cut--I'm not sure if you want to pursue that
19 any more, but I--I typically start the report--it starts with
20 about three pages, the caption, and the next thing I do is as
21 I--this is not perfect order, but it's generally a rough order
22 of the order in which I read things, so I'll go through those
23 and I'll form an outline in my head. That outline then
24 becomes what is primarily--it ends up in bold. That's kind of
25 how I work. And so when you say notes, I mean, yeah, I wrote

1 stuff and changed stuff as I went along, but I don't take
2 notes and I don't underline depositions and so forth. Insofar
3 as possible, sir, I try and review them on a computer screen
4 and not on a piece of paper.

5 Q. Have you read every page of everything that was
6 given to you?

7 A. Oh, my gosh, I think so. There might have been a
8 page or two. And I can't remember which one it was. And I'm
9 sure you had nothing to do with it, but there might have been
10 a page or two that I read it and my head went like that
11 (Indicating). Mrs. Rutter's deposition, for example, got
12 long.

13 Q. I did not take that, so . . .

14 MR. McMILLAN: My apologies.

15 THE WITNESS: Oh. Sorry. That's right. Sorry.

16 BY MR. BEDNARZ:

17 Q. Did--I've forgotten my next question.

18 Have you been provided with any of the reports of
19 the other experts hired by the defendant?

20 A. I'm not--I have a general sense that there are
21 other experts. I don't know who they are, and no, I have not
22 seen the reports.

23 Q. Okay. Do you know Robert Allen from Nashville?

24 A. I know--I think I know who a Robert Allen is, but
25 I don't know him.

1 MR. BEDNARZ: I'm through.

2 THE WITNESS: Okay.

3 MR. McMILLAN: I'm not going to ask him many
4 questions, but I have one follow-up about . . .

5 MR. BEDNARZ: Wait a minute. Are you or aren't
6 you?

7 MR. McMILLAN: I'll ask a couple.

8 MR. BEDNARZ: Okay.

9 THE WITNESS: He said one. One means--

10 MR. BEDNARZ: I thought he said first, I'm not
11 going to ask him any questions.

12 MR. McMILLAN: I said I'm not going to ask him
13 many, because then you'll ask more and we'll all be hungry.

14 EXAMINATION

15 BY-MR.McMILLAN:

16 Q. You discussed with Mr. Bednarz page 28, paragraph
17 6, of your report, and the two of you discussed that the fact
18 that nationally, among persons who had contact with police, an
19 average of 1.5 percent had force used or threatened against
20 them during their most recent contact. Discussion ensued. Mr.
21 Bednarz pointed out, through his questioning of you, that it
22 depends on how the force is reported and in particular, he
23 discussed with you that if each trigger pull of a Taser is not
24 counted as a separate use of force, that could skew those
25 numbers, and I think you agreed with him. But I'll ask you to

1 reconsider that. Would that--if just considering the number of
2 trigger pulls as a use of force, if that's not counted, would
3 that change actually the percentage of persons who have
4 contact with police in forces used against them?

5 MR. BEDNARZ: Object to the form.

6 THE WITNESS: No, it wouldn't. I'd have to go
7 back and look at OJP's standards, but I don't--again, Mr.
8 Bednarz is correct. There's a bunch of things you can do to
9 skew those numbers. You can misreport, you can underreport.
10 You can exercise discretion in what you call force.

11 BY MR. McMILLAN:

12 Q. Uh-huh (Affirmative).

13 A. And there's a framework that helps report those.
14 And I don't believe that--it's my understanding that OJP
15 considers a Taser deployment as a Taser deployment and if
16 there are multiple applications, that's counted still as one
17 use of force. But again, an agency--I give the example of New
18 York police and LAPD. The reason I gave those two examples is
19 because there have been allegations in those two very large
20 departments of their skewing numbers reported to the bureau of
21 justice statistics at different points in their history. You
22 can--you can mess with these, but what's--my point here in
23 this paragraph, I think may be lost in both of your questions.
24 And that is simply that the Gallatin Police Department has a
25 significantly lower rate. It's half.

1 MR. McMILLAN: That's my--that's my question.
2 Thank you.

3 FURTHER EXAMINATION

4 BY-MR.BEDNARZ:

5 Q. I did remember one, since--

6 MR. McMILLAN: I knew it.

7 BY MR. BEDNARZ:

8 Q. --since that question was asked. In your report,
9 you mentioned that the departments you worked with or agencies
10 you've seen that injuries to both suspects and officers went
11 down after the introduction of Tasers?

12 A. That is universally true, in the departments
13 either for whom I have consulted, written policy, or been
14 called on to look at their force reporting. And I have heard
15 anecdotally through others that that's true in other agencies.

16 Q. Okay. Have you heard that there are certain
17 agencies where injuries to suspects and police officers have
18 actually gone up after adopting Tasers?

19 A. I have not heard that there are agencies where
20 injuries have actually increased, no.

21 Q. In the area that this lawsuit is filed, middle
22 Tennessee, do you know whether or not injuries have gone up or
23 down?

24 A. I don't.

25 Q. So you haven't heard that in Nashville when they

1 put Tasers on the street, that both injuries to suspects and
2 officers went up?

3 A. That's not anything I've heard, no.

4 MR. BEDNARZ: Okay. That's all of my questions.

5 THE WITNESS: Okay. I prefer to read and sign,
6 if that's an option.

7 MR. BEDNARZ: That's an option.

8 MR. McMILLAN: You may.

9 Exhibit-1 marked

10 (Proceedings concluded at 12:56 p.m.)
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CERTIFICATE

STATE OF _____)

: ss.

COUNTY OF _____)

I HEREBY CERTIFY that I have read the testimony consisting of _____ pages, and the same is a true and correct transcription of said testimony with the exception of the corrections I have listed below in ink.

Page_____ Line_____ Correction_____

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Page_____ Line_____ Correction_____

KENNETH R. WALLENTINE

SUBSCRIBED AND SWORN to at _____, this _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATE

State of Utah)

ss.

County of Salt Lake)

I hereby certify that the witness in the foregoing deposition was duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken at the time and place herein named;

That the testimony of said witness was reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

Scott M. Knight, RPR

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